

No. 17500

United States
Court of Appeals
for the Ninth Circuit

JOE DRAGICH and VAN CAMP SEA FOOD
COMPANY, INC.,

Appellants,

vs.

NIKOLA STRIKA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division

No. 17500

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

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For Appellee:

MARGOLIS and McTERNAN,
DAVID B. FINKEL,

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Los Angeles 5, California.

In the United States District Court
in and for the Southern District of California
Central Division

In Admiralty
No. 907-60-WB

NIKOLA STRIKA,

Libelant,

vs.

JOE DRAGICH and VAN CAMP SEA FOOD
COMPANY, INC., a corporation,

Respondents.

LIBEL IN PERSONAM FOR MAINTENANCE,
CURE AND WAGES

(Under 28 USC 1916, without prepayment of fees
of costs and without security therefor)

To the Honorable, the Judges of the Above Entitled
Court:

The libel of Nikola Strika, lately seaman aboard the fishing vessel "U. S. LIBERATOR," owned by the respondents above named, against said respondents, and each of them, and all persons intervening in their interests, in a cause of action for wages, maintenance and cure, civil and maritime alleges:

I

Libelant is now, and at all times herein material was, a seaman, and he elects to take advantage of the provisions of Title 28, USC Section 1916 to proceed herein without prepayment of fees or costs and without security therefor.

II

Libelant Nikola Strika and respondent Joe Dragich are residents within the Southern District of California and the Central Division thereof.

III

Respondent Van Camp Sea Food Company, Inc., is now, and at all times mentioned herein was, a corporation, duly organized and existing under and by virtue of the laws of the State of California with its principal place of business located at Terminal Island, California.

IV

Libelant is informed and believes and therefore alleges that the respondents Joe Dragich and Van Camp Sea Food Company, Inc., at all times material herein were the owners of the fishing vessel "U. S. LIBERATOR," and at all such times operated, maintained, supervised and controlled the said vessel.

V

At all times herein mentioned libelant was a fisherman employed by the respondents, and each of them, as a member of the crew of said fishing vessel at wages in the form of a share of the proceeds of the catch of said vessel. Libelant was employed by the respondents pursuant to an oral agreement of hire entered into prior to January 18, 1960, for the period of the 1960 tuna fishing season.

VI

On or about January 18, 1960, while aboard said vessel and while acting within the course and scope of his

employment as such fisherman, libelant fell ill of generalized cerebral arteriosclerosis, Parkinson's secondary thereto, and diastasis, and was forced to, and did, leave the vessel on or about January 18, 1960.

VII

By reason of the illness aforesaid, libelant was then and there disabled from working as a member of the crew of said vessel, and ever since January 18, 1960, he has been, and now is, disabled from working and will continue so to be for an indefinite and unknown period of time in the future. Libelant is entitled to and claims maintenance at the rate of \$8.00 per day from January 18, 1960, up to the time of the filing of this libel and for an indefinite period of time in the future. Libelant is not now informed of the exact amount of such maintenance and prays leave to amend this libel to allege and prove the same when it shall have been ascertained.

As and For A Second, Separate and Distinct Cause
of Action, Libelant Alleges:

I

Libelant incorporates and realleges the allegations of Paragraphs I, II, III, IV, V and VI of the first cause of action as if set forth fully herein.

II

By reason of the illness aforesaid, libelant was then and there disabled from continuing in his duties as a member of the crew of said vessel. Libelant is entitled to and claims a share of the proceeds of the catch earned by said vessel during the 1960 tuna fishing

season. The exact amount of such share is not known to libelant but is known to respondents and libelant prays that respondents be ordered to account for and pay over the same.

Wherefore, libelant prays judgment against respondents, and each of them, as follows:

1. For maintenance in such sum as hereafter may be ascertained.
2. For wages in such sum as hereafter may be ascertained.
3. For costs of suit incurred herein.
4. For such other and further relief as may be proper in the premises.

MARGOLIS and McTERNAN,
/s/ By BEN MARGOLIS,
Proctors for Libelant.

[Endorsed]: Filed Aug. 4, 1960.

[Title of District Court and Cause.]

ANSWER TO LIBEL

To the Honorable Judges of the United States District Court, Southern District of California, Central Division:

The respondents in answer to the allegations of the alleged First Cause of Action of the libel herein, allege as follows:

I.

Admit the allegations contained in Paragraphs I, II, III and IV.

II.

In answer to the allegations of Paragraph V, respondents admit the oral employment, but deny that he was employed for the 1960 tuna season and in this respect allege that he was employed up to and including June 30, 1960.

III.

Deny generally and specifically each and every other allegation contained in Paragraphs VI and VII.

Answer to Second Cause of Action:

I.

For answer to the allegations incorporated in Paragraph I of libelant's Second Cause of Action, respondents incorporate herein by reference each and every admission, denial and allegation of Paragraphs I, II and III of respondents' answer to libelant's First Cause of Action.

II.

Deny generally and specifically each and every allegation therein contained.

Wherefore, these answering respondents pray that libelant take nothing by his libel and that respondents recover their costs of suit and such other and further relief as the Court deems just.

KARMELICH and FELANDO,
/s/ By JOHN J. KARMELICH,
Attorneys for Respondents.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Aug. 26, 1960.

PRE-TRIAL STIPULATION AND CONFERENCE
ORDER

It Is Hereby Stipulated by and between the undersigned counsel pursuant to Rule 16 of the Federal Rules of Civil Procedure and Rule 9 of Local Rules as follows:

I.

This is an action for maintenance and wages allegedly due by reason of the fact that libelant fell ill while employed as a fisherman by the respondents.

The pleadings herein consist of the following:

1. Libel in Personam for Maintenance, Cure and Wages.
2. Answer to Libel.

II.

Federal jurisdiction is invoked under the General Admiralty Jurisdiction of this Court.

III.

The following facts are admitted and require no proof:

1. All parties are residents within the Southern District of California and the Central Division thereof.
2. The respondents Joe Dragich and Van Camp Sea Food Company, Inc., a California corporation, at all material times were the owners of the fishing vessel "U. S. LIBERATOR" and at all such time operated, maintained, supervised and controlled the said vessel.
3. For some time prior to January 18, 1960, libelant was a fisherman employed by the respondents as a member of the crew of the "U. S. LIBERATOR"

with wages in the form of a share of the catch of said vessel.

4. The period of employment for which he was hired was from January 1, 1960 to June 30, 1960 and any fishing trip commencing on or before June 30, 1960 and which may have ended after June 30, 1960, subject to discharge at any time for cause.

5. Libelant last served aboard the vessel on January 18, 1960.

6. If libelant is entitled to maintenance, it is agreed that the rate of maintenance is \$8.00 per day, each day that he was ill and not confined to a hospital.

IV.

The reservations as to the facts cited in Paragraph III above are as follows: None.

V.

The following facts not admitted are not to be contested at the trial by evidence to the contrary. None.

VI.

The following issues of fact and no others remain to be litigated:

1. Whether or not libelant fell ill while in the service of the vessel and left the vessel on account of such illness.

2. Whether or not libelant was discharged for cause on January 18, 1960.

3. The period of time, if any, during which libelant has been and is expected to be ill and receiving cure for his illness.

4. The amount of wages, if any, to which libelant is entitled from the time he left the vessel to the end of his period of employment.

VII.

Exhibits to be offered at the trial are as follows:

1. U. S. Public Health Service records.
2. Settlement sheets showing earnings during the term of employment.

VIII.

The following issues of law remain to be litigated:
None.

IX.

The foregoing admissions have been made by the parties and the parties having specified the foregoing issues of fact and of law remaining to be litigated, this order shall supplement the pleadings and govern the course of the trial of this cause unless modified to prevent manifest injustice.

Dated: This 5 day of December, 1960.

/s/ WM. M. BYRNE,

United States District Judge.

Approved as to Form and Content:

MARGOLIS and McTERNAN,

/s/ By BEN MARGOLIS,

Attorneys for Libelant.

JOHN J. KARMELICH and

AUGUST FELANDO,

/s/ By JOHN J. KARMELICH,

Attorneys for Respondents.

[Endorsed]: Filed Dec. 5, 1960.

In the United States District Court
In and for the Southern District of California
Central Division

In Admiralty
No. 907-60 WB

NIKOLA STRIKA,

Libelant,

vs.

JOE DRAGICH, et al.,

Respondents.

FINDINGS OF FACT AND CONCLUSIONS
OF LAW, AND JUDGMENT

The above entitled cause came on regularly for trial on February 21, 1961, at in the above entitled court before the Hon. William M. Byrne, Judge presiding, sitting without a jury, this being an admiralty action, Margolis and McTernan by David B. Finkel appearing as attorneys for libelant, and John Karmelich appearing as attorney for respondents, and oral and documentary evidence having been introduced on behalf of both parties on February 21 and 23, 1961, briefs by both parties having been filed subsequent thereto, and the Court having considered the same and heard the arguments of counsel and being fully advised, makes the following findings of fact:

1. Libelant fell ill while in the service of the "U. S. LIBERATOR" and left said vessel on account of said illness.

2. Libelant was not discharged for cause from said vessel by respondents on January 18, 1960.

3. Libelant received outpatient cure from January 22, 1960, through February 28, 1960, and from April 3, 1960, through September 30, 1960. Libelant received inpatient hospital cure from February 29, 1960, through April 2, 1960. Throughout both said outpatient periods libelant was unfit for duty.

4. Libelant is entitled to maintenance at \$8.00 per day for 180 days covering the period of outpatient care mentioned in paragraph 3 above, making a total of \$1,440.00, plus interest thereon from September 30, 1960, in the amount of \$50.40.

5. The amount of wages to which libelant is entitled from the time he left the "U. S. LIBERATOR" to the end of his period of employment thereon is \$3,-831.78, plus interest thereon from June 30, 1960, the amount of \$101.16.

6. Except as herein otherwise specifically found, all of the allegations of the libel are true and none of the allegations of the answer thereto are true.

Conclusions of Law

From the foregoing facts, the Court makes the following conclusions of law:

I.

Libelant is entitled to judgment against respondents decreeing that he recover from respondents \$1,440.00 for maintenance plus interest in the amount of \$50.40; and wages for the remainder of libelant's employment tenure aboard the "U. S. LIBERATOR" in the amount

of \$3,831.78, plus interest in the amount of \$101.16. Libelant is entitled to judgment against respondents in the total amount of \$5,423.34.

Judgment

In accordance with the foregoing findings of fact and conclusions of law,

It Is Ordered, Adjudged and Decreed that libelant recover from respondents the sum of \$5,423.34, together with costs amounting to \$.....

Dated: April 7, 1961.

/s/ WM. M. BYRNE,
Judge.

Approved As To Form:

This 3 day of April, 1961

JOHN J. KARMELICH and
AUGUST FELANDO,

by:

Attorneys for Respondents.

I acknowledge that I was personally served with a true copy of the above Findings of Fact, Conclusions of Law and Judgment on this 3 day of April, 1961.

JOHN J. KARMELICH and
AUGUST FELANDO,

/s/ By JOHN J. KARMELICH,
Attorneys for Respondents.

[Endorsed]: Lodged April 3, 1961. Filed April 7, 1961. Entered April 11, 1961.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL, NOTICE OF
HEARING OF MOTION AND ATTACHED
ORAL FINDINGS OF COURT IN SUPPORT
OF MOTION.

Respondents move the Court to set aside the Findings of Fact and Conclusions of Law and Judgment entered herein on the 11th day of April, 1961 in the docket, and to grant Respondents a new trial on the grounds that:

1. The judgment is contrary to the law;
2. The judgment is contrary to evidence;
3. The judgment is contrary to the law and evidence;
4. The judgment is contrary to the weight of the evidence and is completely unsupported by the evidence introduced at the trial which was totally insufficient to show that libelant fell ill while in the service of the "U. S. LIBERATOR", and there is no evidence to sustain the judgment of the Court herein, as evidenced by the Honorable Court's oral findings, which oral findings are attached hereto in support of the motion for a new trial.

This motion is based upon the records, pleadings, and proceedings in this and on the attached oral findings of fact made by the Honorable Court herein. The authority for this motion is rule 59(a) Federal Rules of Civil Procedure.

Dated: This 20th day of April, 1961.

KARMELICH and FELANDO,
/s/ JOHN J. KARMELICH,
Attorneys for Respondents.

In the United States District Court
Southern District of California
Central Division

No. 907-60-WB Admiralty

NIKOLA STRIKA,

Libelant,

vs.

JOE DRAGICH, et al.,

Respondents.

Honorable William M. Byrne, Judge Presiding.

REPORTER'S TRANSCRIPT OF
ORAL FINDINGS

Los Angeles, California

Thursday, February 23, 1961

Appearances: For the Plaintiff: David B. Finkel,
Esq., 3175 West Sixth Street, Los Angeles, California.

For the Respondents: John J. Karmelich, Esq., 413
West Seventh Street, San Pedro, California.

February 23, 1961, 9:45 o'Clock A.M.

* * *

The Court: This is a very unusual case. In a sense it appears on the surface to be just the ordinary case for maintenance and cure and for wages, but it has an element in it, of course, that makes it entirely different, and that's the fact that he was discharged. Of course, it makes it very difficult for counsel to argue, because both of you—you must carry water on both shoulders. You both have made some very accurate

and pertinent observations, but of course as you make one point it bears against you with respect to the other, because of course there are two main issues in this case. One is whether or not the libelant fell ill in the service of the ship, and the other is whether or not he was discharged for cause.

Frankly, it appears to me from the evidence that he did not fall ill in the service of the ship. But it also appears to me that he was not discharged for cause.

Now, when you stop to analyze the two, and that's why I say it is so difficult to consistently argue affirmatively on both, or negatively on both—first of all, with respect to his illness, he wasn't ill at the time he left the service of the ship. That is the thing, of course, that makes it difficult for the respondent, who must show a reason, cause for the discharge, but at the same time must establish that he was not ill at the time he left the ship, or perhaps he was ill before he ever went on the ship.

If you would call it an illness, he was ill before he went on the ship, but he was not ill in the sense that he could not work. From your own argument he could work at the time that he went on the ship. For instance, the report that you refer to is very significant. He, himself, the history given by the libelant himself. "The patient is a 49 year old American seaman who has noticed in the past two years inability to laugh, thick speech, slowing of movement, excess tearing of eyes, forward falling over on walking with resulting increase in gait, difficulty keeping eyes open, drooling at the corners of the mouth, generalized tiredness and what

the patient describes as no happiness"—for two years he has been noticing that. The testimony of those who knew him before say it existed at that time. That doesn't mean he was ill in the sense that he could not work, because he did work. Mr. Dragich who employed him says he employed him, and testifies from the very beginning he didn't work any different than he did at the time when he finished his service on the ship. He says it appeared to him at all times that he worked in that fashion. He says he is a big man, he is heavy, and several times from the stand he said if you look at him you will see he is a big man, he does everything slow. All the reports show obesity, he is obese, he is fat, always has been, he is slow working, so of course from the very beginning—incidentally, Mercovitch wasn't with him on the second trip. Mercovitch signed this on the basis of the first trip. And the testimony is very clear that there wasn't much difference between the first trip and the second trip. And after the second trip was over the libelant goes up to the doctors and he tells the doctors he is all right, and they examine him and they agree that he is all right, there is nothing wrong with him. He doesn't tell them this history, although they have it, certain portions of it. In fact, in the early history it is shown back in 1957—it is part of the history, if you look back you will find that it is part of the history, this same thing, which they subsequently in September 1960 diagnosed as Parkinson's. This was subsequent, in 1960. This was in here, he always had this, but even the doctors didn't know it because he still could work, and when he came in and told them, "I could still work," they gave him a fit-

for-duty slip, because as long as he could work they let him continue to work.

This may have progressed slowly, but it wasn't any different from what he had had for years. As he himself stated, and as the doctors certified in their fit-for-duty slip, he was fit and ready to go for duty on January 18, 1960.

Now, of course, we come to this question. They say he is fit for duty, and he says he is fit for duty, but Mr. Dragich fires him, and he says he fires him because he can't do the work. The point is that he is fit for duty, for just as much duty—from Mr. Dragich's own words—as he was the day he hired him. Mr. Dragich hired him, he says his wife talked to Strika's wife, so he hired him. He wasn't permitted to go into the details, but the inference is very clear, he testified that he talked to his wife and his wife talked to Mrs. Strika, and then on the basis of that he hires him. So the inference of course being that he wants to give him a job. But he says, then, he was a slow worker, he was big, he was heavy, he was a slow worker. And he continued to be a slow worker, and he couldn't keep up with the young fellows.

And I don't doubt but what that is perhaps correct.

Then of course that brings up this question: Can you employ a man who is a slow worker, for the fishing season, and then in the middle of the fishing season because he is just what you employed to start with, a slow man, because the other fishermen are complaining, can you fire that fellow? Can you fire him just because there are complaints about him? Can you fire him just because he is slow?

As Mr. Dragich says, he had been doing the same work, he had some complaints during the first trip, he had some complaints during the second trip, so he decided it was either to fire one man or sixteen or nine or whatever it was. So that he acceded to the demands of the others.

And I don't blame the others. If I were a fisherman and I were a young man and could work fast, and I get paid by the amount of work that I and my fellow fisherman do, I want young fishermen out there with me, too.

But that doesn't mean that an entire crew of older men couldn't fish. They wouldn't catch as many fish as the younger men because they couldn't work as fast, but they still could fish. And this man could fish.

He was hired and he shouldn't have been fired. He shouldn't have been fired as long as he could go out. He felt that he could go out, the doctors felt that he could go out, they gave him a fit-for-duty slip, so he wasn't fired for cause. That is not cause.

Would it be cause if some of these younger men whose names are on this slip, if for some reason all of them turned on one and said, "We don't want him working with us, we want you to relieve him of his duties"? Can they do that and this man would have no recourse?

He has a right to work, he was employed, unless there is real cause. And I say it isn't cause the mere fact that there are eight younger men on the vessel who can work faster, that is not cause. He still could go out and work.

As I stated a moment ago, from Mr. Dragich's own statement, he could work just the same as he could work before, because he ended up January working about the same as he worked when he employed him in September.

So the judgment will be for the libelant for \$3831.71, which is the amount which you have stipulated would be the wages that he would be entitled to if he is entitled to recover wages.

Mr. Karmelich: Your Honor, may I make a statement?

The Court: Yes.

Mr. Karmelich: I feel from your remarks—I may be incorrect, your Honor—that if your Honor feels there wasn't cause, that was a separate defense. The first defense was that he was not disabled. If Mr. Strika wants to recover these wages, then his cause of action is for wrongful discharge. This case is one for wages, maintenance and cure, because he was taken ill and became disabled.

The Court: This is for wages, maintenance and cure, and you have set out in this action as an issue in the case, "Whether or not libelant fell ill while in the service of the vessel and left the vessel on account of such illness." "2. Whether or not libelant was discharged for cause on January 18, 1960."

You have also stipulated the amount of wages, if any, to which the libelant is entitled from the time he left the vessel to the end of his period of employment, and you have stipulated as to the maintenance, which is out of the picture, and you have now entered into a

stipulation that if he was entitled to wages, he was entitled to receive the sum of \$3831.71.

Mr. Karmelich: Yes, your Honor, if he was entitled to wages under the maintenance and cure theory under the admiralty law.

The Court: I am not talking about any theory. I am talking about what has been stipulated to in this case, and under your pretrial order that we have here. We are trying this case under this pretrial order, and we have disposed of all the other issues.

One thing under this pretrial order is whether or not he is entitled to recover his wages, and one of the issues which you set forth here is whether or not he was discharged for cause. If he was not discharged for cause, what he is entitled to recover.

Mr. Karmelich: Your Honor, the following issues of fact and no others remain to be litigated: "Whether or not libelant fell ill while in the service of the vessel"—

The Court: Yes.

Mr. Karmelich: "and left the vessel on account of such illness."

The Court: Yes.

Mr. Karmelich: "The period of time, if any, during which libelant has been and is expected to be ill and receiving cure for his illness."

The Court: Yes.

Mr. Karmelich: "The amount of wages, if any, to which libelant is entitled from the time he left the vessel to the end of his period of employment."

The Court: Yes. You missed one very important one, and that is No. 2.

Mr. Karmelich: "The period of time, if any, during which libelant has been and is expected to be"—

The Court: No. Issue No. 2. That is issue No. 3.

Mr. Karmelich: I guess it was revised. "Whether or not libelant was discharged for cause on January 18, 1960."

That is one of the facts.

The Court: That is not a fact. That, Mr. Karmelich, is an issue in the case. In paragraph VI, "The following issues of fact and no others remain to be litigated:" As you just read—"1. Whether or not libelant fell ill while in the service of the vessel and left the vessel on account of such illness." And then skipping down to 3, "The period of time, if any, during which libelant has been and is expected to be ill and receiving cure for his illness." And you entered into a stipulation covering that on page 2. But, as I say, it is unimportant here for our purposes here, that is the maintenance, with respect to the discharge, whether or not libelant was discharged for cause on January 18, 1960.

"The amount of wages, if any, to which libelant is entitled from the time he left the vessel to the end of his period of employment."

If he was discharged for cause, he isn't entitled to any. If he wasn't discharged for cause, he is entitled to what he would have earned.

The two of you got together and you stipulated that the amount that he would be entitled to if he is entitled to wages is \$3831.71. What can be clearer than that?

Mr. Karmelich: Your Honor, may I say something further?

The Court: Yes.

Mr. Karmelich: The theory of the Complaint was wages, maintenance, and cure. The allegations of the Answer denied that this man was taken ill. The allegation of the Complaint is that this man is entitled to wages because he was taken ill. As an affirmative defense we do state this man wasn't taken ill, this man was discharged. There is no prayer, concerning the Complaint, that this man was seeking wages under any other theory than because of the fact that he was taken ill.

The Court: He is entitled to his wages if he was improperly discharged.

Mr. Karmelich: But that was not the Complaint. There is no cause of action—

The Court: In other words, you are saying, in effect, that I am wrong when I say there is a distinction between his discharge because he had the same affliction at the time he was discharged that he had during the period when he was employed. You are making the argument for Mr. Finkel? Maybe it is right. Maybe I will take it under submission and think it over. If he is entitled to all of it, he is entitled to this. If it can be said that the discharge was improper, that he didn't have a right to discharge him, because—let me say that he did have a right to discharge him because of his slowdown, then his slowdown amounted to an illness and Mr. Finkel is right. Maybe I am wrong. If I am wrong, I am wrong because I am saying that he is not entitled to it.

I thought these issues were very clearly stated, but if you say that I can only determine it on that theory, then of course I do and will determine that the slow-down was an illness and therefore that he was ill at the time; and if he is ill he is entitled to maintenance.

All right. I will take it under submission. Maybe I will write a little memorandum on it.

Both of you may write a memorandum. I didn't take the citations you gave me, so you may write memorandums. 10, 10 and 5. In other words, if you send me a memorandum, libelant may have 10 days for the opening memorandum, and you will have 10 days to answer it, and then you will have 5 days. And I am particularly interested in those cases relating to symptoms of illness prior to employment that culminate in serious illness during the employment.

Mr. Karmelich: Thank you, your Honor.

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 18th day of April 1961.

/s / SAMUEL GOLDSTEIN,
Official Reporter.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed April 20, 1961.

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR NEW TRIAL

Respondents' Motion for a New Trial having come on for hearing before the Honorable William M. Byrne, in the above entitled Court, on May 8, 1961, and Karmelich and Felando By John J. Karmelich appearing for respondents and Margolis and McTernan By David V. Finkel appearing for libelant both having been heard, It Is Hereby Ordered that said motion for new trial be, and it hereby is Denied.

Dated: May 17, 1961.

/s/ WM. M. BYRNE,

United States District Judge.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed May 17, 1961.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the respondents, Joe Dragich and Van Camp Sea Food Company, Inc., a corporation, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment entered herein.

Dated: this 31 day of May, 1961.

JOHN J. KARMELICH and
AUGUST FELANDO,

/s/ By JOHN J. KARMELICH,
Proctors for Respondents.

[Endorsed]: Filed June 2, 1961.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

The points upon which Appellants will rely on appeal are:

1. The Court erred in finding that the Libelant was taken ill while in the employ of the vessel "U. S. LIBERATOR."
2. The Court erred in finding that any preexisting ailment became aggravated or reoccurred while the Libelant was in the employ of the vessel "U. S. LIBERATOR."
3. The Court erred in refusing to grant a new trial.

JOHN J. KARMELICH and
AUGUST FELANDO,
/s/ By JOHN J. KARMELICH,
Proctors for Respondents-Appellants,

Affidavit of Service by Mail Attached.

[Endorsed]: Filed June 2, 1961.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Pursuant to Rule 75(a), the Respondents—Appellants—hereby designate for inclusion in the Record on Appeal the following portions of the Record, proceedings and evidence in this action:

1. The Complaint
2. The Answer

3. The Pre-Trial Order
4. The Reporter's Transcript of the testimony at the trial of all of the witnesses
5. The Reporter's Transcript of the oral Findings of the Hon. William M. Byrne, Judge Presiding
6. The Findings of Fact and Conclusions of Law
7. The Judgment
8. The Respondents' Motion for new trial
9. The Order denying Respondents' Motion for new trial
10. The Notice of Appeal
11. This designation of Contents of Record on Appeal
12. The Statement of Points on Appeal.

JOHN J. KARMELICH and
AUGUST FELANDO,
/s/ By JOHN J. KARMELICH,
Proctors for Respondents-Appellants.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed June 2, 1961.

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the foregoing documents together with the other items, all of which listed below, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

Page:

- 1 Names and addresses of Attorneys
- 2 Libel, filed 8/4/60
- 5 Answer to Libel, filed 8/26/60
- 8 Pre-Trial Stipulation and Conference Order, filed 12/5/60
- 11 Findings of Fact and Conclusions of Law and Judgment, filed 4/7/61 and entered 4/11/61
- 14 Motion for New Trial, filed 4/20/61
- 31 Order denying motion for new trial, filed 5/17/61
- 33 Notice of Appeal, filed 6/2/61
- 34 Designation of contents of record on appeal (appellants)
- 36 Appellant's Statement of Points on Appeal
- 38 Appellee's Designation of additional portions of record on appeal, filed 7/6/61
- 40 Stipulation and Order extending time within which Appellants may file record and docket appeal, filed 7/11/61

One volume of Reporter's Transcript of Proceedings had on: February 21 and 23, 1961

Libelant's Exhibit No. 1

Respondent's Exhibit "A"

Dated: August 1, 1961.

[Seal]

JOHN A. CHILDRESS,

Clerk,

/s/By WM. A. WHITE,

Deputy Clerk.

In the United States District Court
Southern District of California
Central Division

No. 907-60 WB Admiralty

NIKOLA STRIKA,

Libelant,

vs.

JOE DRAGICH, et al.,

Respondents.

Honorable William M. Byrne, Judge Presiding.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California
Tuesday, February 21, 1961
Thursday, February 23, 1961 [1]*

Appearances: For the Libelant: Margolis and Mc-Ternan, by David B. Finkel, Esq. 3175 West Sixth Street, Los Angeles, California.

For the Respondents: John J. Karmelich, Esq. 413 West Seventh Street, San Pedro, California.

February 21, 1961, 9:45 O'clock A.M.
(Other court matters.)

The Clerk: No. 907-60 WB Admiralty, Nikola Strika vs. Joe Dragich, et al., for trial.

Mr. Finkel: Ready for the plaintiff, your Honor.

*Page numbers appearing at top of page of Original Transcript of Record.

Mr. Karmelich: I am ready under the circumstances. I do not have my witnesses, as I previously told your Honor.

The Court: Don't you have any of your witnesses?

Mr. Karmelich: No, your Honor. They are all out to sea.

The Court: How soon do you expect them back?

Mr. Karmelich: I was making interrogation yesterday of the Fishermen's Co-op Association, and they expect them within the next three weeks, because their license runs out as far as fishing.

The Court: Within the next three weeks?

Mr. Karmelich: Yes.

The Court: Then I will permit the plaintiff to put on his case and then I will put it over for three weeks.

Mr. Karmelich: Thank you, your Honor.

Mr. Finkel: If the court will permit, my case is whittled down to its bare essentials for the same reason that the defendant's case is. Part of my case is missing.

The Court: Where is your case? [4]

Mr. Finkel: I have my case with my client right here. The rest of my case is on the high seas for the same reason.

The Court: The same boat?

Mr. Finkel: No. Another vessel, two other vessels. I have one witness on call and I have my client here who I am prepared to base a case on if I have to.

The Court: You may put your case on. Inasmuch as it is a non-jury case, I will continue it for three weeks, and if you have any additional evidence, you may

put it on at that time, and the defendant may put on his case.

Mr. Finkel: I understand that, your Honor.
thank you for your consideration.

Mr. Finkel: May I proceed?

The Court: I don't want to extend it too long, because when a judge tries too many cases in the intervening time the facts are likely to get a little faint in your memory.

Mr. Finkel: Your Honor, I would like to make a request of the court. Inasmuch as this case is most likely to develop into a situation involving a bulk of witnesses being heard by the court at a future time, and one witness being heard by the court at this time, it is my judgment that such an approach places the plaintiff at a rather significant disadvantage, and if it is your intention to move the case [5] forward, I would request that the entire matter be moved forward.

The Court: Why would it?

Mr. Finkel: Because the plaintiff—the defendant in this situation is given three further weeks to establish an answer to a case which I must put on now and rely on, and it seems to me that that is like giving the defendant an extra opportunity for a pre-trial discovery after the trial has begun. I feel a sense of imbalance there and I ask your Honor whether or not it might not be more appropriate, since it is your intention to move the case forward for the purposes of the defendant's witnesses, to move the entire matter forward.

The Court: Frankly, I think you are unduly alarmed. There isn't any reason why the fact that there is a lapse of three weeks—we are interested in the facts,

and if the facts are uncovered in the three weeks, then I would want to hear them, and that's the reason that I stated to you that you also will have an opportunity to present any additional evidence in the three weeks. The point of course is that I don't want to lose this time.

Mr. Finkel: I understand that, your Honor.

The Court: One case was settled this morning. That case was supposed to be a jury trial that was going to last three or four days. It has gone up in smoke because they settled it. Now this case, Mr. Karmelich's client is out to [6] sea. Of course it is his own fault for going to sea when he has a case that is on the calendar. However, if I can, I would like to accommodate him so that the case could be heard on its merits.

It would seem to me if you are ready for trial that you would want to put your case on. Do you have medical testimony?

Mr. Finkel: I don't have medical testimony available today. We are relying primarily upon the United States Public Health Service records which have been subpoenaed.

Mr. Karmelich: Your Honor, that is the only medical. This man was treated by the United States Public Health, and they are on call. They can deliver the records. They are just upstairs.

Mr. Finkel: I am prepared to go forward if it is your Honor's desire that I do so.

The Court: As I have indicated, you will have an opportunity if you want to present further evidence.

you may do so when the matter is continued, on the continued date.

Mr. Finkel: Thank you.

The Court: I just want to get rid of the case. I want to try the case. All right. You may proceed.

Mr. Finkel: I call the libelant, Nikola Strika, to the stand, please. [7]

NIKOLA STRIKA

called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: Give us your full name.

The Witness: Nikola Strika.

The Clerk: S-t-r-i-k-a?

The Witness: Yes.

Mr. Finkel: May I proceed, your Honor?

The Court: Yes.

Direct Examination

By Mr. Finkel:

Q. Mr. Strika, what is your occupation?

A. Fisherman.

Q. How long have you been a fisherman?

A. I am a fisherman for 24 years in this country, and in old country.

Q. How many years would that total altogether?

A. 30 years.

Q. How long have you been fishing in the Southern California area?

A. I am fishing in South California and down Mexico for 24 years.

(Testimony of Nikola Strika.)

Q. Mr. Strika, I would like to call your attention to the calendar year 1959, if I may. I would like to ask you, sir, what fishing vessels did you exercise your occupation [8] aboard during the year 1959?

A. The WESTERN STAR.

Q. WESTERN STAR?

A. Yes.

Q. When did you begin your fishing on the ship the WESTERN STAR?

A. I fished there two seasons, two tuna seasons, two sardine seasons, two years.

Q. Do you remember about when you began on the WESTERN STAR?

A. I don't know exactly. I can't tell you.

Q. Do you remember when you stopped fishing on the WESTERN STAR?

A. Some time in September.

Q. September what year?

A. September '59, I believe. I quit WESTERN STAR and went fishing with Joe Dragich.

Q. You stopped fishing on the WESTERN STAR during September 1959? A. Yes.

Q. You don't remember when you began fishing on the WESTERN STAR? Can you tell us approximately how long you fished?

A. I fished almost two years on the WESTERN STAR.

Q. Will you tell the court very briefly how it came to pass that you stopped fishing on the WESTERN STAR during [9] September 1959?

A. I was still—

(Testimony of Nikola Strika.)

Mr. Karmelich: Objected to as immaterial.

Mr. Finkel: I think it is a foundational type of question. It may be that it is not pertinent to the exact issues of the case, but I think it lays a foundation upon which this case can best be understood. It is with that in mind that I ask the question. I think if the court understands just how this whole story began, it would be in a better position to evaluate it.

The Court: Overruled. It will be admitted as a preliminary question.

Q. (By Mr. Finkel): Tell the court how you came to stop fishing on the WESTERN STAR.

A. Joe Dragich called me one Sunday morning in September to come fishing with him. I quit WESTERN STAR to go fishing with Joe Dragich.

Q. By Joe Dragich, are you referring to the same Joe Dragich who is a respondent in this lawsuit?

A. Yes, that's right.

Q. When Mr. Dragich, according to your testimony, requested that you stop fishing on the WESTERN STAR and come fishing with him, what did you do? Did you comply with his request?

A. I quit WESTERN STAR and went fishing right next day, [10] we went for Mexico, it was a Sunday.

Q. Please speak very slowly and try to speak distinctly, Mr. Strika. A. I try my best.

Q. Mr. Strika, while you were fishing on the WESTERN STAR, what type of work were you doing?

A. All kinds, everything on deck, pull the net, push

(Testimony of Nikola Strika.)

the fish in hatch, ice the fish and everything else; I do everything.

Q. During the period of time which you were fishing on the WESTERN STAR, was there ever an occasion that you had to stop fishing when the other men on the vessel continued fishing?

A. Say it again.

Q. Let me repeat my question. Was there ever a time while you were fishing on the ship the WESTERN STAR when for any reason at all you had to stop fishing when all the other men continued to do their work, was there ever a time that you had to stop doing your work?

A. No, no, no.

Q. Now, will you tell the court what were the likenesses and what were the differences between the work that you did when you started fishing on the LIBERATOR in September of 1959 and the work that you did while you were fishing on the WESTERN STAR two seasons prior to September of 1959? [11]

A. WESTERN STAR we were icing fish with the ice, and LIBERATOR they have sprinkler system, you don't have to ice the fish with the ice, you throw fish in the ice and freeze it. It is a little better than the WESTERN STAR, it is easier work.

Q. Will you enumerate the most important and main jobs that you did on the LIBERATOR?

A. What do you mean "enumerate"?

Q. You started fishing on the LIBERATOR in September '59?

A. Yes.

Q. Tell the court what were the different things you did as part of your work.

(Testimony of Nikola Strika.)

A. I was piling cork, pulled the porpoises out of the net and throw them overboard, and took tuna from the net and put it in brine in the hatch.

Q. How many men were there in the crew on the LIBERATOR while you were working on the LIBERATOR in September of '59?

A. I think it was 10 or 11, I can't tell you exactly, 10 or 11 men, I am not sure; 10 or 11 men.

Q. When you first shipped out on the LIBERATOR, you said it was September '59, is that correct? A. Yes.

Q. After you shipped out, when is the first time that you came back to port after you shipped out September '59? [12]

A. I can't recall exactly the day, but it was late in October some time when we first came back home.

Q. Of what year?

A. Same year, 1959.

Q. October 1959?

A. I am not positive. I can't tell you exactly.

Q. While you were out on the LIBERATOR between September '59 and October '59, did you do all the jobs and all the work that you have just described?

A. Yes, I was doing it.

Q. Did anybody complain to you about your work during that time?

A. Nothing, nobody.

Q. During that period, still dealing with September '59 through October '59, did you feel sick at any time? A. No.

(Testimony of Nikola Strika.)

Q. Did you feel there was anything wrong with you at any time?

A. I don't think so. I was working all kinds of work, I was feeling all right.

Q. Did you have to stop doing your work for any reason?

A. No, nothing of the kind.

Q. Did anyone else have to do any of your work for you during that time?

A. No, sir. I do my work all the time. [13]

Q. Will you tell the court what happened when the boat came back? First of all, where did the boat come back when it came back to land in 1959? Did it come to San Pedro?

A. We stopped San Pedro slip, yes.

Q. What happened then?

A. That was first trip. You are talking about first trip?

Q. Yes, sir, from September to October '59.

Q. First time we stop in slip and then we drop fish—

Q. Speak slowly and tell the court what happened.

A. We stopped at fisherman's slip, and after I believe two, three days, we went back to Van Camp cannery on Terminal Island to unload the fish.

Q. When this unloading process went on, did you participate in that? A. Yes.

Q. Tell the court what you did during the unloading job.

A. I was on hatch, pick the fish up and put it in buckets and fish go out after. Pick the fish from the bottom and put it in buckets.

(Testimony of Nikola Strika.)

Q. Is that what all the men on the boat did?

A. Yes. Put it in buckets, and the bucket goes up and puts it in cannery.

Q. During the time you were doing the unloading work did you feel sick? [14]

A. No.

Q. Did you feel there was anything physically wrong with you?

A. No. I feel perfectly all right.

Q. Did anyone complain to you about the work you were doing during the unloading job?

A. No.

Q. Did anyone do any of your work for you during the unloading job? A. No.

Q. After the unloading work was done, what happened next with the LIBERATOR?

A. We went back in the slip for three, four days, five days, I don't know how long we went in port, then we went back to Mexico for the second trip.

Q. How long after the ship came in port after the first trip did it go out again on the second trip?

A. We stayed, I believe, a week in San Pedro, I can't tell exactly how long we stay, about a week, then we went back to Mexico.

Q. Will you tell the court what happened, if anything, during that week between the time you came in and the time you went out, other than the unloading job which you have already told us about?

A. Nothing happened. We finish work on the boat and [15] we was free for some time, we stay home, do nothing, and then after that we bring the boat

(Testimony of Nikola Strika.)

in slip and make fuel and groceries and went down to Mexico.

Q. How long would you say you were at home during that first week?

A. A week. I am not sure.

Q. When the LIBERATOR shipped out again, were the same men on the boat that were on it the first trip?

A. Second trip?

Q. Yes.

A. One man was different.

Q. Do you remember who that was?

A. One man was in somebody else's place, one guy stayed home to go in Army and another guy came in his place. That was the only change.

Q. Besides this one man who left the crew to go in the Army, everybody else was the same on the boat as best you remember?

A. I believe other man, too. Sam Carr, he came on the second trip.

Q. Will you describe to the court in your own words the second trip, what happened on the second trip? Where did you go?

A. Second trip we went fishing down past Acapulco, we was fishing there, and porpoises and big set, 105, 110 degree heat, strong heat, we was working, and I feel dizzy and I fainted. [16]

Q. Let me stop you right there. You fainted?

A. Yes.

Q. Up until that time while you were on the second trip did anybody complain about your work?

A. No, nothing.

(Testimony of Nikola Strika.)

Q. Did anybody do any of your work for you?

A. No. After I fainted, yes.

Q. I am talking about up until you fainted.

A. Before, nothing.

Q. Did you feel sick, did anything feel wrong with you?

A. I don't feel sick. I feel all right, I was doing my work.

Q. You say you fainted. Describe exactly what happened. Tell the court when it was and exactly what happened.

A. It was before noon, it must be before noon.

Q. How long had you been out, would you say?

A. Maybe 15 days out.

Q. What month was it?

A. That was in December when it happened, I believe, early in December.

Q. Early in December?

A. It must have been early in December. I feel dizzy and I fainted.

Q. What time of day was it?

A. It must have been around 10:00, 11:00 o'clock, be- [17] fore noon, something like that, 11:00 o'clock; I am not sure.

Q. What work were you doing or what were you doing at the time you fainted?

A. I was throwing porpoises out of the net in the water and pushing tuna down the hatch.

Q. Up until the time—

Mr. Karmelich: I am sorry. Could I have that last answer?

(The answer was read by the reporter.)

(Testimony of Nikola Strika.)

Q. (By Mr. Finkel): Was that job a job that you did alone, or was somebody else doing it with you?

A. Me and cook.

Q. Me and who?

A. Cook. Phillip Roman. When fish was 150 pounds, 200 pounds, big fish throw two men, and small fish throw alone.

Q. All right. Now, tell the court exactly what happened when you fainted.

A. After I fainted, after when I come back to myself, then I went in the bunk and laid down for a couple of hours and rest myself.

Q. Who saw you faint?

A. The crew, special that cook, Roman, he was right close to me. Everybody see it. That is not big ship. Everybody could see. It is maybe 50 feet, 30, 40 feet, everybody could see.

Q. What did you do for the rest of the day after you [18] fainted?

A. I took easy, sleep in the bunk, lay in the bunk and sit down and take it easy.

Q. What happened after that?

A. Second time it was in the afternoon it happened, in strong heat it hit me in the head.

Q. You are going a little too fast. What happened the next day?

A. The next day I fainted again.

Q. What time of the second day did you faint?

A. It must have been in the afternoon, some time in the afternoon.

(Testimony of Nikola Strika.)

Q. Will you tell the court what happened that morning of the second day before you fainted?

A. We was looking for fish.

Q. What were you doing?

A. Looking for the porpoises, for the fish, and when you find the fish, you set and then you work.

Mr. Finkel: May I have the answer?

(The answer was read by the reporter.)

Q. (By Mr. Finkel): Let me ask you this, Mr. Strika: Were you doing anything on the morning of that second day that you would not—let me rephrase that. Was there any work that you would normally have done on that second morning which you didn't do because you had fainted the day before? [19]

A. After I fainted, they gave me a lighter job on the boat. That morning probably I fix the nets and sit down and look for fish, that's all.

Q. Did they give you lighter work to do after you fainted the first time?

A. That's right.

Q. When did they give you that work?

A. Right after I fainted.

Q. The same day?

A. The next day. The next time we have to work.

Q. Describe the difference between the work you originally did and the light work that they switched you to.

A. I was throwing hook. After, they give me to throw the hook, and the guy catch it and put it on the sling. It was easier work, lots easier work than before.

(Testimony of Nikola Strika.)

Q. Did this switch-over from the heavier work to the lighter work take place before you fainted for the second time?

A. After I fainted, third time.

Q. You are going too fast, Mr. Strika. What I am asking you about is what happened to you after you fainted one time, the next day what happened to you, after you fainted only one time?

A. Same thing next day. After second time faint they give me lighter job.

Q. Well, if they gave you the lighter job after the [20] third time, does that mean that you are saying that they gave you—that you kept on doing the heavier work after the first time?

A. I was doing same work first time to the second time. After second time they gave me throw the hook, lighter work.

Q. Okay. Now I want to call your attention to the afternoon when you fainted for the second time. Tell the court what happened then when you fainted for the second time?

A. When I come back to normal, I went to sleep in the bunk, laid down and rest in the bunk.

Q. What were you doing the exact time that you fainted for the second time?

A. Was working around the deck, fixing the nets and throw the fish in hatch and throw the fish in brine, and things like that.

Q. While you were doing that job, just at the exact time that you fainted, was anybody working with you, or were you working alone?

(Testimony of Nikola Strika.)

A. Everybody was around, cook was working with me.

Q. Who saw you faint?

A. I believe everybody except skipper. Skipper was up in the pilot. Most of the time he was with you, sometimes he was up in pilot. He was down, too, but I am not sure. The rest of the crew saw me.

Q. What happened after you fainted for the second [21] time for the rest of that day?

A. Take it easy. Went to the bunk and lay in the bunk, and I took it easy.

Q. Did the captain of the ship know that you were taking it easy for the rest of the day?

A. Yes, he know.

Q. Did everybody on the ship know?

A. Yes, everybody know.

Q. What happened when you got up the next day?

A. When we got up, we start traveling and we look for the fish.

Q. Now, let me ask you a question right there. When you got up on the third day, having fainted the day before and the day before that, did you do anything different that day?

A. After second time I faint they gave me a lighter job, I told you that already, I was doing easier job after that.

Q. What were you doing when you fainted for the third time?

A. Working on the same job. Catch the fish, you throw the fish in the hatch, you throw the porpoises, you pull the nets, and things like that.

(Testimony of Nikola Strika.)

Q. When you fainted for the third time were you working alone or were you working with anybody else?

A. With a group, with a crew.

Q. Do you know if anybody saw you faint for the third time? [22]

A. I believe everybody saw me.

Q. What did you do after you came to on that third faint?

A. Went to the bunk and laid down, take it easy.

Q. What time of day was it when you fainted for the third time?

A. In the afternoon, 1:00 o'clock, I am not sure.

Q. After you fainted for the third time and you took it easy for the rest of that day, then what happened after that?

A. I had it easy for the rest of the trip.

Q. How long were you still out to sea after that third faint?

Mr. Karmelich: Just a minute, counsel, I wonder if the reporter could read back the last answer. I didn't hear it.

The Court: Yes.

(The record was read by the reporter.)

The Witness: We came home, I believe, 12th or 13th of January 1960, so we must have stay at least a couple or three weeks, probably three weeks.

The Court: Excuse me just a minute.

Read the last answer, please.

(The answer was read by the reporter.)

Q. (By Mr. Finkel): I would like, Mr. Strika, for you to tell the court as clearly as you can just

(Testimony of Nikola Strika.)

exactly what you did and what happened to you during that period of time after your third faint until the ship came to port, just exactly what did [23] you do. A. I was doing—

Q. In other worrds, a period of time went by after the third time you fainted until the time you came to port, and you estimate that time as being something like two or three weeks, is that correct?

A. Yes.

Q. Did you faint any more after that?

A. No, no, no, I didn't faint any more. I feel kind of weak and dizzy a little bit. We didn't do hard work after that. Make a couple of sets, and we was at anchor and we came home. We didn't even bring a full load.

Q. Did you do any work, did you do any heavy work during the next two or three weeks?

A. No, I didn't do no heavy work.

Q. But you did do light work?

A. Yes, something fixing around the boat.

Q. Describe as carefully as you can the type of things that you did during that next period of time. What kind of work did you do?

A. Most of the time we set, and when we don't set we probably looking for the fish. I hardly do nothing, sit and look for the fish. If you find the fish, you set and then you work.

Mr. Karmelich: May I have the answer, please?
[24]

(The answer was read by the reporter.)

The Witness: That's right.

(Testimony of Nikola Strika.)

Q. (By Mr. Finkel): When you describe that, are you describing what you did or what all the men on the boat were doing?

A. All the men. You all work together when you work.

Q. What I want to know is did you do anything different during that next two or three weeks than you would have done had you not fainted?

A. Yes, I was doing different. I just was throwing hook. That was different than I do before. Before, I was piling cork, I was piling lead line before, and now they give me throw the hook. I was doing different.

Mr. Finkel: I would like very much to get that answer.

(The answer was read by the reporter.)

Q. (By Mr. Finkel): What do you mean when you say, "Now they give me"? Who gave you? Who told you to change the work from the heavy work to the light work? A. Skipper.

Q. Do you remember when he told you to switch?

A. Yes, he did tell me.

Q. When did he tell you?

A. After all that. After second faint.

Q. Did you do any light work before these fainting spells? [25]

A. Sometimes light, sometimes hard, sometimes easier, like always on a boat. You don't work hard all the time. Sometimes hard, sometimes easy.

Q. Did anyone do any of your work for you before you fainted?

(Testimony of Nikola Strika.)

A. No, not before. I was doing my work all the time.

Q. Had you ever fainted before that, Mr. Strika?

A. No. Never was sick in my life. Never fainted.

Q. Never anything wrong with you in your life?

A. Never was sick in my life.

Q. Did you ever feel any different than you felt when you were a young man or any time in the past?

A. You cannot feel when you were young. You begin to feel different, that is true. But I was good to do my work, to do my job.

Q. In what ways did you feel different, if in any way at all?

A. Feel kind of a little bit slow down a little bit, things like that, that is coming, that gets you, you are little different.

Q. When you got back into port at the end of the second trip on the LIBERATOR—by the way, do you remember when that was?

A. Must have been 12th or 13th of January the last trip, the second trip. [26]

Q. When you got back into port, what happened then?

A. Went to unload the fish the next day, first or second day we unload the fish.

Q. Did you participate in the unloading job?

A. I unload the fish, yes.

Q. Did you do any different work while you were unloading than you did when you were unloading when you came back from the first trip?

(Testimony of Nikola Strika.)

A. Same work as I do before. Catch the fish and put it in the bucket.

Q. All right. Now, during this period of time starting when you fainted those three times, up until the time that the ship came in the harbor, into port and unloaded, how did you feel during that time?

A. I was feeling weak, on the weaker side, dizzy sometimes, dizzy and weak, slow motion.

Mr. Finkel: May I have the answer, please?

(The answer was read by the reporter.)

Q. (By Mr. Finkel): Did you tell anybody how you felt during that time? Did you tell any of the men on the boat how you felt?

A. I think I was telling a couple of guys that I feel on the weak side after that, yes.

The Court: What was the last answer?

(The answer was read by the reporter.) [27]

Q. (By Mr. Finkel): When you got back into port and you finished your unloading work, what did you do then? A. I went to marine doctor.

The Court: You went where?

(The answer was read by the reporter.)

Q. (By Mr. Finwel): How did it come to pass that you went to the marine doctor?

A. I get the card from the skipper's broker to go to the marine doctor.

Q. How did it come to pass that you got the card from the broker?

A. I went to the broker and I told him to take physical examination at marine doctor, so I got slip and I went to the doctor for physical examination.

(Testimony of Nikola Strika.)

Q. When you got into the harbor, when did you decide to go to a doctor?

A. I went after second day, I believe. I was trying to go out fishing, more fishing, I was trying to go out fishing, I feel pretty fair yet. Skipper told me, "I cannot have you on the boat because you are sick. You better go see doctor."

Q. When did that take place?

A. When we unload the fish and everything was done, after that.

Q. Had you ever discussed sickness and inability to work as a fisherman with anybody else on the ship before that happened? [28]

A. Not before, no.

Q. When you went to the doctor, who did you see, or where did you go?

A. Dr. West, I believe, at that time was in marine hospital, Dr. West, something like that.

Q. Does the name Dr. Wyatt sound familiar?

A. Dr. Wyatt, W-y-a-t, something like that.

Mr. Finkel: For the record, I think the Public Health Service records will indicate that that is Dr. Wyatt, W-y-a-t-t.

The Witness: That's right.

Q. (By Mr. Finkel): Have you done any work since then?

A. No. When I was by the doctor, I was to the doctor all February, to 29 February 1960, doctor sent me to marine hospital in San Francisco. I was there for five weeks in the hospital.

Q. How long?

A. Five weeks. Eight doctors examine me every

(Testimony of Nikola Strika.)

little thing, and they took a picture of my head, and that's the time they find my sickness, that is the first time I had for Parkinson's Disease.

Q. When you were dismissed from the San Francisco hospital, what happened after that?

A. They discharged me the 2nd of April and gave me a slip— [29]

Q. What year? Is this all in 1960 we are talking about?

A. Yes, sir, 1960. They discharge me from the hospital in San Francisco and gave me a card continue to San Pedro Clinic. Then I was going to San Pedro Clinic all the time to the 30th of September.

Q. 1960? A. 1960, yes.

Q. When you started working on the LIBERATOR in September of 1959, did you have any idea that you were sick?

A. I never knew, so help me God, cross my heart and hope to die right now, I never know. I was doing my work. Before that I fish 24 years, I had vacation one week, I was working steady for 24 years, very hard work, I feel perfectly all right.

Q. While you were on the LIBERATOR from September of 1959 to January 1960, did anyone ever accuse you of not doing your work?

A. No, nobody tell me anything about it. But after my fainting, after that time there was murmuring or complaining that I was unable to do my work, after my fainting. But before, no.

Mr. Finkel: No further questions. [30]

(Testimony of Nikola Strika.)

Cross-Examination

By Mr. Karmelich:

Q. Mr. Strika, you passed out three times on the U. S. LIBERATOR?

A. That is what Mr. Joe Dragich testified in the front.

Q. I am asking you. You passed out three times, fainted three times on the LIBERATOR on the second trip, isn't that right?

A. I going to say this: When man is fainted, he is unable to do anything for himself. Crew testified that I fainted three times and fourth time they take me to the sleeping quarters. That is what they testified.

The Court: Read the answer.

(The answer was read by the reporter.)

Q. (By Mr. Karmelich): Now, I am asking you, Mr. Strika, how many times did you faint?

A. Three times, the way they said. I told you again when a man fainted he can't do nothing for himself. Is that true. So Joe Dragich said that and whole crew.

Q. Mr. Strika, when you reported to the Public Health, did you tell them you fainted three times?

A. First I went to—

Q. Just say yes or no, Mr. Strika. When you went to the Public Health— [31] A. Yes.

Q. —did you tell them you fainted three times?

A. First time I don't tell them nothing. Second time I told them.

Q. What did you tell them the second time?

A. Told them because I was sick.

(Testimony of Nikola Strika.)

Q. What did you tell them?

A. That I fainted.

Q. How many times?

A. Three times the crew testified.

Q. What?

A. The crew testified three times, three or four.

Q. Did you tell them you fainted three times?

A. I think so. I am not sure.

Q. Mr. Strika, the boat came in from that trip that you fainted three times on, as you state, on January 13, 1960, isn't that right?

A. It must have been, something like that.

Q. When the boat came home to San Pedro, did you tell the skipper you weren't feeling well, Mr. Dragich?

A. I was trying to go fishing, go fishing with him.

Q. Mr. Strika—

A. He knew that I was feeling bad.

Q. Did you tell him that you were not feeling good?

A. Naturally, I told him that when I was fainting.

[33]

Q. When the boat came to San Pedro did you tell Mr. Dragich, "I am not feeling good"?

A. I didn't tell him first time nothing—

Q. When was the first time after the boat came home that you told Mr. Dragich you weren't feeling well?

A. We unload the fish 15th of January, and I still try to go out fishing with him, I was pretending I am able to go fishing. Joe Dragich told me like this, "Nick, I can't have you on the boat. You are sick. You go see doctor."

(Testimony of Nikola Strika.)

Q. Mr. Strika, after you arrived in San Pedro from the second trip, did you at any time tell Mr. Dragich that you were not feeling well?

A. He knew that.

Q. I am asking you, did you tell him?

A. I didn't tell him nothing at that time.

Q. Did you ask him for a Public Health certificate to go to see the doctor?

A. He told me, he said to go see a doctor. He said, "You are sick, you can't be on the boat, you go see a doctor." He told me three, four times. He told me like this.

Q. Isn't it true, Mr. Strika, that Mr. Dragich on January 18th told you that you were fired?

A. He told me like this: "I am not firing you. I can't have you on the boat because you can't do the work, you are a sick man, go see the doctor," he told me three, four [33] times, he told me like this.

Mr. Karmelich: May I have that answer, your Honor?

The Witness: I will repeat slowly.

He call me Nick. "Nick, I can't have you on the boat because you can't do work, you are a sick man, go see doctor." He told me three, four times, he told me plain like this.

The Court: Do you want the answer read?

Mr. Karmelich: That is all right, your Honor. I will ask him further.

Q. Mr. Strika, you stated that you were never sick before, isn't that right?

A. That's true.

Q. Never sick?

(Testimony of Nikola Strika.)

A. I had a couple of colds all my life. That is all that I know.

Q. Before seeing the Public Health doctors in January of 1961, when was the last time you saw any doctor, before January 1961—1960, I mean. I am sorry.

A. What I can remember, I went to doctor for check-up, general physical examination, I went '57, '58 and '59.

Q. Where? A. San Pedro Clinic.

Q. That's all? [34]

A. That is what I remember, I went for general check-up physical examination, and they always told me I am okay. They check urine, lungs, heart, my blood pressure, everything. They always told me I am okay. So I was working fishing all the time.

Q. And you didn't see any other doctors, just the Public Health doctors?

A. Yes, I see Fitzgibbons in Long Beach. That was in February, I believe.

Q. February when?

A. I don't remember the date.

Q. What year? A. '60.

Q. What? A. 60, I believe.

Q. Was this after you quit the U. S. LIBERATOR? A. That's right.

Q. After you quit the LIBERATOR?

A. After that, yes.

Q. Did you ever tell the Public Health doctors that you had suffered a stroke some time before?

A. I never had a stroke in my life. That is a pure

(Testimony of Nikola Strika.)

lie whoever said that. I have been fishing for 24 years, never stop.

Q. So you have never—when was the first time that [35] you knew you had the Parkinson's Disease?

A. When in San Francisco Hospital they took a picture of my head and I knew, they told me so.

Q. Didn't Dr. Fitzgibbons tell you that you had Parkinson's Disease?

A. He told me—he didn't call it that. He told me in different words. He said something in my head, he told me different way, he didn't say Parkinson's Disease. I didn't hear Parkinson's Disease.

Q. After the time you first reported to the U. S. Public Health Service Hospital in San Pedro, did you complain to the doctors about anything, did you tell the doctors what was wrong with you?

A. First time I went I told them I would like to go fishing back again on that boat. Second time when I went they find my blood pressure and something different.

Q. When did you first go to the Public Health?

A. I think January first time.

Q. 18th of January 1960? A. '60.

Q. At that time did you tell the doctors what you were complaining of?

A. I still want to go fishing, I told them nothing. They gave me a card, "Fit for Duty," that first time.

Q. On January 18th? [36]

A. Then I went to Joe Dragich and showed him my card. When I see Joe Dragich, I told him I am okay, I want to go fishing. He told me this way,

(Testimony of Nikola Strika.)

"Nikola, you are a sick man, you better go see doctor. You cannot fish, you are a sick man." Then I went second time back, so they find blood pressure and something sick in the head wrong.

Mr. Finkel: I wonder if I could have the last question and answer read.

(The last question and answer thereto were read by the reporter.)

The Witness: All right.

Q. (By Mr. Karmelich): When did you next see the doctor?

A. Then 29th of February I went to doctor at Marina and he sent me to San Francisco doctor.

Q. When did you see the San Pedro doctor next?

A. 30th of December.

Q. I mean after January 18th.

A. After a couple of days, I believe. The first time it was the 18th, and second time it was a couple of days after, I believe, something like that.

Q. During the first trip what work did you do? Were you on the net pile—

A. I was piling cork first trip.

Q. You were the cork man? [37]

A. Cork piling. Sometimes pull—

Q. Did you do that the whole trip?

A. I believe I did the first trip. One guy relieved me one time for a while. I was doing mostly cork piling, and I was pulling nets some time. Sometimes on the lead line, too.

Q. Mr. Strika, isn't it true that every trip there is

(Testimony of Nikola Strika.)

one man on the lead line, there is one man on the cork line, and then there are other men on the net?

A. Four men on nets, yes.

Q. Now, during that first trip were you on the cork line all the time?

A. I think so. Sometimes—when they are short, sometimes you pile lead line, when the men go after fish, after porpoises, then you jump over there. Something like that goes in the fishing business.

Mr. Finkel: Did you get that?

(The answer was read by the reporter.)

The Witness: Correct.

The Court: We will take a short recess.

(Recess taken.)

Q. (By Mr. Karmelich): Mr. Strika, on January 18, 1960, when you saw the Public Health, is it correct that the Public Health said that you were fit for duty, that you could go fishing?

A. They give me card, yes. [38]

Q. They gave you a card? A. First time.

Q. January 18th? A. 18th, yes.

Q. 1960? A. Yes.

Q. You went to the Public Health after Mr. Dragich told you that he wasn't going to take you fishing any more, isn't that right?

A. No. Joe Dragich talk to treasurer-secretary of the union Local 33, told him to send me back again to the doctor, so John Royal called me to tell me to go back to the doctor.

Q. It was after— A. After the 18th.

(Testimony of Nikola Strika.)

Q. It was after that conversation that you went to see the doctor for the first time?

A. It was before, before. Before. Joe Dragich called John Royal to tell him to send me.

Q. When did Mr. Dragich tell you that he wasn't going to take you fishing?

A. Tell me the 18th, I believe, or before, 17th, 16th or 17th.

Q. And you went to the doctor in the 18th?

A. Yes. [39]

Q. On the 18th the doctor said you were okay to go fishing?

A. Yes, he gave me okay to go fishing.

Mr. Karmelich: That is all, your Honor.

Redirect Examination

By Mr. Finkel:

Q. Mr. Strika, when you went to the Public Health Service office the first time after getting back to port, January 18th, had you had the conversation that you just mentioned with Mr. Dragich before that visit or after that visit?

A. After I was by the doctor and he give me that card, and then I went to see Joe next morning and I show to him card, I said, "Joe, here is what doctor said."

He said, "Nick, you are sick man, I can't have you on the boat, you better go see doctor again."

That is what he told me.

Q. What I want to get at, Mr. Strika, is the time sequence. The boat gets back to the harbor something

(Testimony of Nikola Strika.)

like January 13, 1960, right?—at the end of the second trip?

A. January 15 we unload the fish.

Q. After the fish unloading process was over, what is the next thing you did?

A. Joe told me, “I can’t have you on the boat,” that I [40] can’t do my work because I am a sick man.

Q. When was that?

A. After we unload the fish.

Q. Do you remember the date?

A. It must have been 16th or 17th. So I told him, “Joe, I want to go fishing with you, I feel all right, I want to go fishing.”

He said, “You can’t go fishing with me, you are a sick man, you better go see a doctor.” He told me a dozen times.

Q. When that happened, had you been to the doctor yet? A. No. After I went.

Q. After this conversation you went to the doctor for the first time, is that what you are saying?

A. The first time, yes, that’s right.

Q. When you went to the doctor for that first time, what did you tell them when the doctor examined you?

A. I said, “Doctor, I want to take general examination.”

He said, “Come on in, take off your coat, lay down on bed.”

Q. Did he ask you why you wanted an examination? A. No, he didn’t ask me.

(Testimony of Nikola Strika.)

Q. Did you tell him?

A. Every year almost I take a general examination.

Q. Why did you want a general examination at that par- [41] ticular time, do you remember?

A. What?

Q. When you went to that doctor—

A. I wanted to prove that I am all right to Joe Dragich. He told me that I am sick, I can't do no work, I am a sick man, go to the doctor.

Q. Was it your hope and intention to get a "Fit for Duty" slip? A. Yes.

Q. And then if you had gotten a "Fit for Duty" slip, what was it your intention do do with it?

A. I went back to Joe and showed him slip. He said, "Nick, you are sick. You better go see a doctor."

I said, "Here is slip Fit for Duty."

He said, "I don't believe it. You better go see another doctor. I don't believe that."

Mr. Finkel: No further questions.

Mr. Karmelich: No further questions.

The Court: You may step down.

Mr. Karmelich: Your Honor, there are parts of the records from the Public Health and there are further records that will be brought to this court, but, counsel, I think we have stipulated and I think it is in the pre-trial order that they may be introduced in evidence. Do you want to introduce them? [42]

Mr. Finkel: If I may note, your Honor, when I subpoenaed the records originally, the records which were forwarded to the Federal Building here were only

those records which commenced on the 18th of January 1960 to date. They did not send the records prior thereto. Yesterday I called the Public Health Office in San Pedro and I arranged to have his prior history sent up, and I understand though it may well be in the building now, it isn't ready to be sent down here, but it will be very shortly. Therefore, the Public Health records that are here are incomplete, and it was the pre-trial stipulation of counsel, approved by the court, that these documents would be offered as evidence for your Honor's examination. Accordingly, the medical picture in its complete stage is not yet available for your Honor, but it will be shortly.

Mr. Karmelich: Your Honor, I see no problem with introducing that portion. True, there are further records that will come in. It will be whatever Public Health records, if any, they have, of this man prior to January—

Mr. Finkel: Lest there be any confusion, it is clearly my intention offering what we have in evidence.

The Clerk: Your Honor, when the girl brought them down she said this was the record insofar as the first subpoena was concerned. There was a second subpoena and she would have the record prepared within an hour. That has been about an hour ago, so probably they will be ready this [43] morning some time.

The Court: Don't you think you should get hold of the girl and see whether the complete record is now ready?

Incidentally, will that include this or supplement this? Will that be a partial duplication?

Mr. Finkel: No. There will be no duplication, your Honor. That is my understanding.

The Court: Then you might as well offer that, and then see if you can get hold of the girl and offer the rest of it.

The Clerk: Which party is offering it. Mr. Finkel?

Mr. Finkel: The documents which I would now offer into evidence, your Honor, would be those Public Health medical reports which covered the time period of January 1960 through the present.

The Court: January 19th?

Mr. Finkel: January 18, 1960, through—

The Court: The present?

Mr. Finkel: Yes, sir, through the present. At this time I would offer these documents into evidence.

The Court: Very well.

Mr. Karmelich: No objection.

The Court: They will be received.

The Clerk: Libelant's Exhibit 1. [44]

(The exhibit referred to was received in evidence and marked as Libelant's Exhibit No. 1.)

The Court: As I understand it, you are also going to offer another portion of the records for the period prior to this?

Mr. Finkel: Yes. With the court's permission, I would offer those documents in evidence at some future time.

The Court: Are you ready to rest now?

Mr. Finkel: There is one further item that I would like to offer into evidence, if I may.

I would like to ask the court's indulgence for a moment, if I may, because I have a problem with respect

to this next item of evidence. I am referring now to a series of documents which are commonly referred to as Settlement Sheets. These sheets reflect the breakdown of the catch of the vessel involved in this case from the time period of approximately late 1959 through June of 1960, which covers the time period that we are concerned with in this case for the purposes of wages, and in that area. However, the copies that I have, although they are duplicate originals and are not bothersome in the terms of the best evidence rule—

Mr. Karmelich: Counsel, I will stipulate—I checked your records and for the record may I read this? These are identical to what you have. Your Honor, we don't even have to introduce it into evidence, because what counsel [45] is pointing to is that if this man is entitled to wages, he would be entitled to the amount of wages as evidenced by these records, fish catch records.

The Court: Why don't you both look at them and then stipulate that if he is entitled to wages at all, he is entitled to such-and-such a sum, and just state the sum?

We will take another recess and you can work that out, and at the same time get in touch with the Public Health Service upstairs and see whether or not they have the rest of that record.

Mr. Finkel: Fine, your Honor.

The Court: If they have, you can get that in and get rid of that.

(Recess taken.)

Mr. Karmelich: Your Honor, during the recess we were able to obtain the balance of the Public Health records which are from May 1948 to November '59 of the U. S. Public Health, and by stipulation they may be introduced as part of Libelant's 1.

The Court: Very well.

(The exhibit referred to was received in evidence as part of Libelant's Exhibit No. 1.)

Mr. Karmelich: The further stipulation, your Honor, that if this man is entitled to wages to the balance of the season, that the wage figure is in the amount of \$3,831.71. [46]

Mr. Finkel: That will be a net figure, your Honor.

The Court: Very well. How about a date?

Mr. Karmelich: I know your Honor's calendar is very congested, and as stated, your Honor, within three weeks this vessel will arrive. Did your Honor want us to notify you as to the exact dates so that if you have any spare time that any case may be settled and these men are here, we will bring them up forthwith, and I will take it upon myself to speak with your clerk every second day to ascertain whether or not there have been any cases settled, and whether or not this matter could be fit in.

The Court: You think it will be back within about three weeks?

Mr. Karmelich: Within three weeks, your Honor. Probably earlier, but we will definitely complete this matter within the next three weeks.

Your Honor has been very courteous and kind, and I sincerely appreciate it, and I will check every other

day with your clerk to ascertain available dates as soon as I know the exact date that my people will arrive.

The Court: You don't have to check every other day from now on.

Mr. Karmelich: No. As soon as I have a tentative arrival date of the vessel.

The Court: You might check with him Thursday, the [47] 2nd of March. Of course, that is a little early, I realize, but check with him for the first time Thursday, the 2nd of March, and see whether or not you might be available for Tuesday, the 7th. Then you can check regularly from then on, if not available Tuesday, the 7th. I think that I will probably have time on the 7th.

How long do you think it will take now? Half a day?

Mr. Karmelich: Your Honor, my case certainly will not take more than half a day. It will be very brief.

Mr. Finkel: My case will be briefer than that.

The Court: You won't have very much?

Mr. Finkel: Very little, if anything.

The Court: It may be that we can fit it in on a Monday afternoon.

Mr. Karmelich: Your Honor has been kind to us. We will fit it in any time for your convenience.

The Court: We will try that. You are calling on the 2nd?

Mr. Karmelich: Yes.

The Court: I have been having some trouble with the 7th. I have had a couple of cases blow up on the 7th so I have been trying to set additional cases. We will see on the 2nd. If not, we will fit it in some

time during the month of March, possibly on a Monday afternoon.

On the 21st I had a case that was supposed to go for [48] two weeks. Of course, those cases are very bad. If a case like that blows up, then I have a lot of time. So we will just leave it that way.

(Whereupon, at 12:00 o'clock noon the matter was continued to a date to be fixed by the court, which date was later fixed as February 23, 1961, at 9:45 o'clock, a.m.) [49]

* * * * *

Los Angeles, California, Thursday, February 23, 1961, 9:45 A.M.

The Court: The clerk will call the calendar.

The Clerk: No. 907-60 WB Admiralty, Nikola Strika vs. Joe Dragich, et al., for further trial.

Mr. Karmelich: Ready for respondent.

Mr. Finkel: Ready for plaintiff, your Honor.

The Court: You may proceed.

We will interrupt the trial, Mr. Herrmann, when they come in on the other matter.

Mr. Finkel: May it please the court, on Tuesday the libelant testified and was cross-examined, and it is the intention of the libelant now to move forward with his next witness, but I would make one request of the court before I do so, and that is that I would request that I be permitted to recall the libelant for the purpose of posing one or two further questions to him.

It occurred to me that might be particularly appropriate this morning in light of the fact that there is going to be a short interruption anyway, rather than interrupt a new witness.

The Court: Very well. You may call him.

This witness has been sworn. [51]

NIKOLA STRIKA

recalled as a witness in his own behalf, having been previously duly sworn, was examined and testified further as follows:

Further Direct Examination

By Mr. Finkel:

Q. Mr. Strika, I would like to call your attention to the first of the two trips that you took on the *LIBERATOR*, which first trip lasted from late September 1959 until approximately late October 1959, and I would like to ask you, sir, how many different types of work you did aboard that ship during the first trip?

A. First trip I was piling cork whole trip.

Q. Did you do any other work besides piling cork on the first trip?

A. Yes, you do. On a set, you pull in porpoises and throw overboard, you take tuna from the nets and throw in brine, and things like that.

Q. Did you do any other work on the first trip?

A. Sometimes on the set I used to go to the lead line and sometimes I pull the nets, too.

Q. Lead line?

A. Yes, for a short time.

(Testimony of Nikola Strika.)

Q. Did you ever do any work on the book during the first trip?

A. Not on the first trip, no. [52]

Q. At any time during the first trip were you transferred from heavy duty to light duty?

A. Not first trip, no.

Q. At any time during the first trip did anyone complain to you that your work was too slow?

A. Nobody told me nothing.

Q. At any time during your voyage, either of your two trips, did you ever feel any physical changes taking place?

A. I feel a little bit like this, slow down, you know how it is.

Q. When did you feel that?

A. I feel the worst the second trip.

Q. Tell the court as much as you remember about that.

A. I feel a little bit on the slow side, a little bit.

Q. After your fainting spells that you testified about on Tuesday, on the second trip did the nature of your work change?

A. Yes, I was working on the hook after that.

Q. Was that the first time that you were working on the hook on the LIBERATOR?

A. Yes, second trip.

Q. Will you tell the court just exactly what events took place with respect to your switching over to working on the hook?

A. I was working first on the cork and then—
[53]

(Testimony of Nikola Strika.)

Q. Speak very slowly and distinctly.

A. Before I working on the cork line, then after I work on the lead line for some time, and then after I fainted they give me throwing hook, lighter job.

Q. When did they give you the job of throwing the hook?

A. After my fainting.

Q. You had never done work on the hook before on the LIBERATOR?

A. Never, never before.

Mr. Finkel: Your witness, counsel.

Recross-Examination

By Mr. Karmelich:

Q. Mr. Strika, you stated you felt worse on the second trip. You didn't feel good on the first trip, either, did you?

A. I felt pretty good. I was doing my work.

Q. You say you felt pretty good?

A. I feel all right.

Q. What was wrong with you?

A. There was nothing wrong, I guess.

Q. You said you felt worse on the second trip. Now, what was wrong with you physically on the first trip?

A. There was nothing wrong, I don't think so. Just I feel a little slow.

Q. You felt a little slow? [54]

A. Yes.

Q. What made you feel a little slow?

A. I don't know.

(Testimony of Nikola Strika.)

Q. Had you felt this slow feeling before you got on the job on the LIBERATOR?

A. No, no.

Q. On the first trip did you have trouble lighting a cigarette? A. No. It was easy.

Q. You could light a cigarette with no trouble?

A. Certainly.

Q. The second trip?

A. Second trip same thing. Just a little bit, sometimes—

Q. No trouble at all?

A. No. It was easy.

Q. On the first trip you state that you were the cork man all the time?

A. Whole trip that trip, first trip I was piling cork.

Q. And the second trip you were cork man, lead man— A. Yes.

Q. —and then on to the hook?

A. That's right.

Q. The hook is the line leading from the boom—

A. Down. [55]

Q. —that you hook onto an eye to raise the net out of the water?

A. Yes, and throw the hook to somebody else.

Q. That hook is used with a line just to raise the net?

A. To pull the net up, yes.

Q. Who was on the lead line on the first trip?

A. I believe engineer, chief engineer.

Q. Who was on the lead line on the second trip when you didn't handle the lead line?

(Testimony of Nikola Strika.)

A. Engineer, chief engineer.

Q. Did the cook ever go on the lead line?

A. Sometimes, yes.

Q. Why would you go on the lead line?

A. They send me on the lead line.

Q. Did they send you on the net pile?

A. Yes. Some other guy took the cork line and he said, "You go pile the lead line," and then I go work there.

Q. Why did they do that, Mr. Strika?

Mr. Finkel: Objection, your Honor. It calls for a conclusion of the witness.

The Court: Sustained.

Q. (By Mr. Karmelich): Mr. Strika, you are familiar with the fact, are you not, that approximately eight crew members of the U. S. LIBERATOR who fished on the first or second trip signed a document stating that they wanted you fired, or some- [56] thing to that effect, because you couldn't do your work?

A. I didn't know nothing about it, but I heard about it later, I heard about it.

Q. Didn't you see that document when you came down to the boat—

A. Nobody showed it to me.

Q. —with your union representative, Mr. Royal?

A. I didn't see it.

Q. Were you there when Mr. Dragich, the skipper and part owner of the boat, talked to Mr. Royal?

A. No. Mr. Royal told me that they signed some

(Testimony of Nikola Strika.)

letter on the boat, but he didn't see it. That's all I know about it.

Q. Mr. Strika, on or about January 18 you went to the Public Health doctors in San Pedro, California?

A. Yes.

Q. And you went there for one purpose—to prove to Mr. Dragich that you could handle your job?

A. Yesterday you asked me that question.

Q. I am asking you again.

A. I already answered that question.

The Court: Answer the question.

The Witness: Okay.

The Court: Read the question.

(Question read by the reporter.)

The Witness: That's right. [57]

Mr. Karmelich: That is all.

The Court: When did you first go to work on the LIBERATOR, the first trip?

The Witness: September some time.

The Court: September 1959?

The Witness: Yes.

The Court: When did you get back the first trip?

The Witness: 13th, 14th.

The Court: You came back when?

The Witness: I believe the 13th. I am not positive. 13th of January.

The Court: From the first trip?

The Witness: No. From the second trip.

The Court: When did you get back from the first trip?

The Witness: In October some time, late in October.

(Testimony of Nikola Strika.)

The Court: October some time?

The Witness: I think so. They know, they got it down.

The Court: Then you went out again when?

The Witness: November out and stood to the 13th of January 1960.

The Court: You went out in September and came back in October?

The Witness: Yes, first trip. [58]

The Court: Then when did you go out again?

The Witness: In November, I believe.

The Court: You went out in November and then you came back the 13th of January?

The Witness: Come back January 13, 1960.

The Court: All right.

Mr. Karmelich: That is all.

Mr. Finkel: Do you desire that I proceed with the next witness, your Honor?

I call to the stand Mr. Rudy Kuzmanich, please.

RUDOLF F. KUZMANICH,

called as a witness by and on behalf of the libelant, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated and give us your full name.

The Witness: My name is Rudolf F. Kuzmanich.

Direct Examination

By Mr. Finkel:

Q. Mr. Kuzmanich, I will call your attention to the period of time 1959 and 1960 because that's the

(Testimony of Rudolph F. Kuzmanich.)

period of time that we are concerned with in this case. I will ask you, sir, if you were ever employed aboard the ship U. S. LIBERATOR.

A. Yes, I was. [59]

Q. Will you tell the court when your employment aboard the LIBERATOR began?

A. To the best of my recollection, my employment aboard the LIBERATOR began approximately in August, if I am not mistaken, August or September.

Q. Of what year—'59?

A. '59, right.

Q. When did your employment on the LIBERATOR end?

A. My last trip aboard the LIBERATOR was at the end of March of '60, that was the last active trip I made. Although my official termination or departure from the boat I don't think was actually marked in time until two trips after that, because I was on a disabled status.

Q. Is it correct that March 1960 marked the end of your physical presence aboard the LIBERATOR?

A. That's right.

Q. During that period of time what was your job on the LIBERATOR?

A. My job was in the little skiff which is—I could use the expression "dinghy"—which is placed in the back of a large skiff, which is let into the water when you make a set, and when the boat comes around the fish to meet the big skiff, the little skiff goes out and you row your way around the boat—

Q. Excuse me for interrupting, but what I am try-

(Testimony of Rudolph F. Kuzmanich.)

ing to [60] ask you is, you were a member of the crew, were you not? A. Yes. I am sorry.

Q. As a member of the crew, were you actively engaged in the fishing process on the LIBERATOR during that period of time? A. Yes, I was.

Q. Do you remember the libelant in this case, Mr. Strika, being on that boat?

A. Would you repeat that?

Mr. Finkel: Mr. Strika, stand up, please.

(Mr. Strika stood up.)

Q. (By Mr. Finkel): Do you remember this gentleman being a member of the crew at that time?

A. Yes, I do.

Q. The questions that I am going to ask you, sir, are going to be primarily about that gentleman on the boat. A. Right.

Q. What I would like to ask you, sir, is whether or not you remember when Mr. Strika started working on the boat. Do you remember?

A. If I am not mistaken, Mr. Strika started working on the boat prior to our September trip. I believe it perhaps may have been a day or a couple of days, around there.

Q. If that is so, then that would mean you were on the ship before he was? [61]

A. Yes.

Q. And when he got on the ship, were you already there? A. Yes, I was.

Q. When Mr. Strika came on the ship, do you remember what work he did on board the ship?

A. Yes. Do you mean on our—

(Testimony of Rudolph F. Kuzmanich.)

Q. Was he a member of the crew?

A. Yes, he was, right.

Q. When you went on a fishing trip in late September 1959, will you tell the court what work you did on the LIBERATOR and what work Mr. Strika did on the LIBERATOR to the best of your recollection, if you do recollect.

A. The work I did, as I told you, was in the small skiff. And also helping on the net pile to bring back the net on board the ship after the set had been completed. As well as, if we did catch any fish, to put them into the hatch, to salt them, and everything else that goes along with the normal process of fishing.

Mr. Strika, as I recall, was actively engaged in working upon the cork pile, which is one of the hardest sections of the net to work. And he also engaged in all the rest of the activities on board the boat that involved any of the process of fishing.

Q. While you were on board the LIBERATOR, did you have occasion to see Mr. Strika doing his work on the cork line? [62]

A. Yes, I did.

Q. Do you recall, sir, that the ship LIBERATOR made a trip starting September '59 and it came back to port some time in October '59? Does that mesh with your recollection?

A. Those are the approximate dates, I imagine. What the exact dates are, I don't know. It was September and October.

Q. When the boat got back to port in October, how long did it stay in before it went out again, approximately?

(Testimony of Rudolph F. Kuzmanich.)

A. We stood in approximately a couple of weeks, I believe. This I am not sure of. I know we started the second trip in November, if I am not mistaken.

Q. Did you do any work while the ship was in port between those two trips?

A. Did we do any work on the boat?

Q. Yes, on the boat.

A. Yes. You have a lot of work that has to be done while you are in. You have to make sure that the boat is seaworthy before you go out again, and this involves a process of bringing aboard your stores, checking your water, putting on your fuel—

Q. Did you participate in the unloading?

A. Yes, I did.

Q. How long did the unloading process last, approximately? [63]

A. I am pretty sure that it lasted two days.

Q. Do you recall whether or not Mr. Strika participated in the unloading? A. Yes, he did.

Q. Can you tell the court what you did on the unloading job?

A. I worked on top of the deck when they lifted the buckets of fish out, hooking them up, and they swing them aboard a dock, they roll them off, as well as in the hatch itself, taking the fish and putting them—loading them into the buckets.

Q. Do you know at this moment, or shall I say do you recall at this moment what work Mr. Strika was doing in the unloading job? Yes or no do you?

A. Yes.

Q. Will you tell the court what that work was?

(Testimony of Rudolph F. Kuzmanich.)

A. Mr. Strika participated in unloading the ship by being down in the hatch, taking the fish out, putting them in the buckets; and I am pretty darn sure that he also at times was up on top of the deck, too, hiking the buckets up. This is a thing where everybody participates. You are down there and they need men up above. In the afternoon some men might go down and others come up. You know, if you get cold or something.

Q. Mr. Kuzmanich, when you shipped out the second time [64] in November, was Mr. Strika aboard with you? A. Yes, he was.

Q. When you shipped out the second time and you started the second trip, what work were you doing?

A. What work was I doing on the second trip?

Q. Yes. A. The same work.

Q. Do you remember what work Mr. Strika was doing when the second trip began? Yes or no.

A. Yes.

Q. Tell the court what this was.

A. It was initially the same work that he started out with on the first trip, working the corks.

Q. And do you know whether or not there came a time on the second trip when Mr. Strika's work was changed to another kind of work?

A. Yes, it definitely was.

Q. Will you tell the court about that, please?

A. We were fishing somewhere down off Acapulco.

Q. Do you remember about when that was, sir?

A. No, I cannot give you the exact date.

Q. For example, do you remember approximately

(Testimony of Rudolph F. Kuzmanich.)

how long after you left port on the second trip it was, or do you remember whether it was half way through the second trip, a third of the way? [65]

A. I would say approximately a third of the way.

Q. Will you continue with your narrative, please?

A. We were fishing somewhere off Acapulco and the temperature down there was roughly around 95 to 100 degrees when you were working in the daytime. Mr. Strika was overcome with heat prostration. We finished a set, and I know that I walked out on the deck and they have a hatch cover that you cover the hatch with, Mr. Strika was laying on top of this hatch cover and he looked like he was one step from death. He had no color. He was just glassy. He was really sick.

Mr. Karmelich: Your Honor, I move to strike that about him being sick. It is a conclusion of the man. He can testify what he saw.

The Court: The last words, "He was really sick," may go out.

Q. (By Mr. Finkel): Would you describe to the court just exactly what you saw happen to Mr. Strika or what you saw about Mr. Strika's appearance at that time? Just what you saw.

A. What I noticed in Mr. Strika or what I saw in him was the fact that it was evident that this man at that time could engage in no—

Q. No. Excuse me for interrupting you. All I want you to tell the court is what you saw. Just tell the court things you observed with your eyes.

A. I saw him laying in his bunk. He went to his

(Testimony of Rudolph F. Kuzmanich.)

bunk, [66] he couldn't get up from the bunk. He was—"ill" is the only word I can use.

Mr. Karmelich: I move to strike that he was ill, your Honor.

The Court: It may go out.

Q. (By Mr. Finkel): Do you recall when you saw him lying on the deck— A. Yes.

Q. —do you recall anything about Mr. Strika's face? Do you remember seeing anything peculiar about his face? A. An absence of color. Very white.

Q. Do you recall at any time on the second trip observing anything about Mr. Strika's face that was in the slightest manner unusual to you?

A. To me his face was the face of a man who was not physically well.

Mr. Karmelich: To which, your Honor, I will move to strike the answer.

The Court: It may go out.

You are not a doctor. Just tell us what happened. They have asked you a dozen times.

Q. (By Mr. Finkel): Just tell us what you saw.

The Court: If he was pale—

The Witness: He was. He was white. His face was fairly glassy. [67]

Q. (By Mr. Finkel): Did you notice anything on the second trip which struck you as unusual about Mr. Strika's physical movements?

A. They had slowed down considerably.

Q. Will you tell the court just exactly what you mean when you say they had slowed down considerably?

(Testimony of Rudolph F. Kuzmanich.)

A. It was very laborious. Observing him, it seemed it was very laborious for him to move. He had trouble getting around to such a degree that it was very noticeable.

Q. Do you recall when you noticed that for the first time?

A. This marked degree of noticeability took place after this period of heat prostration, after these incidents on board the boat when he was overcome by heat.

Q. I would like to take you back to the first trip for a moment.

With respect to the first trip, do you recall seeing, as the trip began, anything peculiar about the movements or the physical appearance of Mr. Strika?

A. What I recall is that I remembered him as a big man who moved slowly, who did not have the reactions of a quick, young man; a big man who was strong and big.

Q. Did you ever notice or observe Mr. Strika on the first trip not to do his work? A. No. [68]

Q. Did you ever on the first trip complain about Mr. Strika in any way?

A. The only way that I had ever complained about Mr. Strika, if I did on the first trip, was in a moment of anger when in a set—

Mr. Karmelich: To which I will object, your Honor. The question is did he ever complain. It can be answered yes or no.

The Court: Sustained.

Mr. Finkel: Just answer yes or no.

The Witness: Yes.

(Testimony of Rudolph F. Kuzmanich.)

Q. (By Mr. Finkel): Tell the court exactly what happened.

A. If there was a sling and you wanted it immediately, you might say, "Grab me that real quick," because you are trying to get the net, or you might have a gilled fish, or something like that, any little incident like that, and you can jump down, being a young man, and get it real quick.

Mr. Karmelich: Your Honor, there are conclusions here.

The Court: Move to strike it, then.

Mr. Karmelich: I move to strike it.

The Court: It may go out.

Testify to facts; not what might have happened, but what actually did happen is what we are interested in.
[69]

Q. (By Mr. Finkel): Let me ask you another question: When the first trip began and everybody just started doing a job, when the thing began did Mr. Strika do anything or fail to do anything which made you complain to anyone?

A. No, not in that sense.

Q. When the trip began and that work first began, did you notice anyone else to complain about Mr. Strika?

A. Did I notice anyone else to—

Q. As the first trip began.

Mr. Karmelich: Did you notice—

Mr. Finkel: I will rephrase my question.

Q. Did you hear anyone complain at that time?

A. Not as the first trip began.

Q. Did you hear anyone complain about Mr. Strika

(Testimony of Rudolph F. Kuzmanich.)

with respect to his work at any time during the first trip?

A. Yes, later in the first trip.

Q. What do you mean by later in the first trip?

A. When we had made some sets and after we had caught some fish, after we had been on the first trip for a while.

Q. Would you say when the trip was half over, two-thirds over, three-fourths over?

A. In that period, half to two-thirds.

Q. Do you recall at this moment what those complaints were that you heard?

A. Slowness of movement, basically. [70]

Q. Do you recall who made those complaints?

A. No, I can't pick names out. It is immaterial—not immaterial, but I can't remember.

Q. Isn't it true that the complaints you refer to were made by members of the crew?

A. Right, yes.

Q. At any time—I am still dealing with the first trip. At any time after you heard these complaints being made by somebody who was a member of the crew about Mr. Strika's slowness, was Mr. Strika's work assignment changed in any way during the first trip?

A. No, it was not.

Q. During the second trip did you hear any complaints made by anyone on the ship about Mr. Strika's work? A. Yes.

Q. Will you tell the court about that, please?

A. During the second trip after we were into the second trip and we were working in the heat and Mr.

(Testimony of Rudolph F. Kuzmanich.)

Strika suffered these heat prostrations, it was evident that he could not do the work—

Q. All I am asking you is what complaints you heard. Don't make any evaluation. Tell us what you saw and heard.

A. We saw the heat prostrations, we saw that he could not do the work, he was not able to do the work.

Q. You say you heard people complain about Mr. Strika [71] and his work on the second trip?

A. Yes.

Q. Do you remember what any of them said?

A. One moment.

I cannot pick one single quotation—

Q. On the first trip you said you heard complaints that his work was slow? A. Yes.

Q. What type of complaints did you hear on the second trip?

A. That he could not take this, that this fishing and this heat was too much for him, that he was too ill.

Q. Did you hear any complaints on the second trip that Mr. Strika was too slow?

A. Yes. He was slower and slower.

Q. Did you, yourself, observe Mr. Strika to be slow in his work? A. Yes, yes, very much.

Q. Did you complaint about Mr. Strika's work being slow? A. Yes.

Q. Did you observe any development or change in this slowness of Mr. Strika's work during the second trip? A. It got markedly worse.

Q. What do you mean when you say it got markedly worse?

(Testimony of Rudolph F. Kuzmanich.)

A. It became—Mr. Strika could no longer handle—he [72] was placed on the lead lines, even working the lead line, which was an easier job than the corks, he could not keep up with. They put him on the hook, which was the simplest job on the boat, and this was even an effort for him.

Q. Was that the first time you ever saw Mr. Strika working on the hook? A. Yes.

Q. While Mr. Strika was being cross-examined a few moments ago, you heard counsel for the respondent refer to a letter, did you not? A. Yes, I did.

Q. Do you remember anything about that letter?

A. Yes.

Q. Were you a signatory to that letter?

A. Yes, I was.

Q. Will you tell the court everything that you remember about that letter?

A. I remember that I signed the letter, as well as I thought the other members of the crew who signed the letter were signing it because we realized that he was too sick to be able to fish—

Mr. Karmelich: To which, your Honor, I object. It is self-serving. The question is not what he realized.

The Court: Tell us what the letter said.

The Witness: The letter was a statement that the crew members wanted Strika off of the boat because he could not handle the job of fishing.

Q. (By Mr. Finkel): Now you say you were a signatory to that letter? A. Yes, I was.

Q. Why did you sign it?

A. Why did I sign it?

(Testimony of Rudolph F. Kuzmanich.)

Q. Yes. A. I signed it because I thought—

Mr. Karmelich: To which I will object as being self-serving.

The Court: Overruled. You may answer that.

Q. (By Mr. Finkel): Tell us exactly why you signed it.

A. I signed this letter because I thought I was doing him one of the greatest favors I could possibly do by getting him off the boat.

Q. What do you mean by that?

A. I thought if this man ever made a trip like the trip we were on it would kill him.

Q. This is the thought process you were going through when you signed the letter? A. Yes.

Q. What made you think all that?

A. Because I had witnessed Mr. Strika during this sequence of events when he was overcome with this heat, and I [74] thought to myself that this man could not survive another trip like this. It was that bad. It affected him that much.

Mr. Karmelich: Your Honor, I am going to object to the whole of his conclusions. He is not a doctor.

The Court: The objection is overruled. It isn't offered for the purpose of proving that he couldn't survive the trip. It is true he isn't a doctor and he can't testify to that, but he is testifying as to why he signed it. You asked about the letter and he is testifying as to why he signed it. If he wants to, he can testify that he signed it—if that is the reason—because he thought Mr. Strika would drop dead the next day, if

(Testimony of Rudolph F. Kuzmanich.)

that's his reason. It doesn't mean that he was going to drop dead or that he was going to be sick.

Q. (By Mr. Finkel): Do you remember when, with respect to the tenure of the second trip, that letter was presented to you by anybody?

A. It was presented to me when we were back in port.

Q. At the end of the second trip?

A. At the end of the second trip.

Q. Who presented it to you?

A. It was presented—it was in the galley, and there were crew members around, and I come into the galley and there was this letter, which we all signed.

Q. Did you discuss this letter with anyone? Just yes or no. [75]

A. Yes.

Q. Did you discuss this letter with the respondent Mr. Dragich?

A. Not to my recollection.

Q. Did you discuss this letter with anyone who is in this room at this time?

A. If I am not mistaken, I think there is a man there, Nick Mercovich, who was also present at that time.

Mr. Finkel: Will you stand up, sir?

(A man stood up.)

Mr. Finkel: Is this the gentleman you are referring to?

The Witness: Yes. And all of the crew had gathered around.

The Court: You may sit down.

(The man sat down.)

(Testimony of Rudolph F. Kuzmanich.)

Q. (By Mr. Finkel): Is it your testimony, sir, that you discussed that letter in some manner with this gentleman? A. As an informal thing.

Q. Do you remember what you said to him with respect to that letter?

Mr. Karmelich: To which I will object as being hearsay.

The Court: Sustained.

Mr. Finkel: Your Honor, I submit in light of the [76] fact this witness is present at this time and is going to testify in this case, that the primary objections as being hearsay evidence are not present, because this can be cross examined and tested, and it is significant to determine what the thinking of the signatory to this letter was, and this is the only way I can get to it.

The Court: Counsel, you are proposing a new rule on hearsay evidence. That is not the rule. The objection is sustained.

Q. (By Mr. Finkel): Was your reason or were your reasons for signing that letter that you told us about a moment ago predicated in any manner upon that conversation that you had with this gentleman?

Mr. Karmelich: Your Honor, I will still object.

The Court: The objection is sustained. You already asked him that question. That of course is a leading question. You already asked him what his reasons were. The objection is sustained. You asked him what his reasons were. He has given you his reasons. You can ask him if he had any other reasons, and he may testify.

Mr. Finkel: I will rephrase my question, your Honor.

(Testimony of Rudolph F. Kuzmanich.)

Q. Above and beyond the specific reasons you listed a moment ago for signing that letter, did you have any reasons for signing that letter which were connected with conversations [77] with other members of the crew?

Mr. Karmelich: To which I will object as being leading?

The Court: The objection is sustained. I told you, counsel, you had asked him the question.

Mr. Finkel: Yes, your Honor.

No further questions.

The Court: We will recess this case for a few moments. If you wish to leave, you may. We will be at recess for a few minutes.

You may step down.

(Recess taken.)

The Court: You may proceed.

Cross-Examination

By Mr. Karmelich:

Q. Mr. Kuzmanich, did Mr. Strika faint at all during the first trip, the one that started in September, October?

A. No, he did not.

Q. Then he fainted on the second trip?

A. Yes.

Q. How many times, to your knowledge?

A. To my knowledge, twice that I know of.

Q. When was the second time? You have related the first time. [78]

A. The second time was in the afternoon.

(Testimony of Rudolph F. Kuzmanich.)

Q. That same date?

A. It was either that same day or on the following day.

Q. Mr. Kuzmanich, you are now suing Mr. Dragich, are you not, the owners of the boat U. S. LIBERATOR? A. Yes, I am.

Q. On the first trip did you ever notice Mr. Strika try to light a cigarette?

A. I observed him lighting a cigarette, yes.

Q. Was there anything different from what an ordinary person—watching an ordinary person lighting a cigarette? A. It would be slower.

Q. Would he drool, saliva coming down the lower part of his mouth and onto his chin?

A. That I don't remember. I know that he was slower when he lit a cigarette.

Q. You noticed this throughout the first trip, isn't that correct? A. Yes.

Q. And his motions throughout were slow?

A. Yes.

Mr. Karmelich: That is all.

Your Honor, counsel has stipulated that the document referred to by this witness, wherein they requested that this man be relieved as a crew member, may be introduced into evi-[79]dence as respondent's first in line.

Mr. Finkel: So stipulated:

The Court: Whose exhibit?

Mr. Karmelich: Respondent's.

The Court: That is the same document that you referred to—

(Testimony of Rudolph F. Kuzmanich.)

Mr. Karmelich: That the crew members signed.

The Court: —that you referred to in cross-examining the libelant?

Mr. Karmelich: Yes, your Honor.

The Court: Very well. It will be received.

Mr. Finkel: May I ask one or two further questions?

The Court: Yes.

The Clerk: Respondent's Exhibit A.

The Court: It will be received as respondent's next in order.

(The exhibit referred to was received in evidence and marked as Respondent's Exhibit A.)

Redirect Examination

By Mr. Finkel:

Q. Sir, you just testified that you are suing the defendant, is that true? A. Yes, sir.

Q. Will you tell the court very briefly what kind of [80] thing is this?

Mr. Karmelich: Your Honor, it is immaterial as to what the nature of it is.

The Court: Objection sustained. Unless you want to show it is something not related to this ship.

Mr. Finkel: I am trying to show it was something early and unrelated to this matter.

The Court: The objection is sustained.

You may step down.

The Witness: Thank you.

Mr. Finkel: Libelant rests, your Honor.

Mr. Karmelich: Mr. Dragich, will you go over there and be sworn by the reporter?

When you talk, be sure to keep your voice up so that we may all hear you.

Mr. Dragich: I will try.

JOSEPH P. DRAGICH

called as a witness by and on behalf of respondents, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated, sir, and give us your full name.

The Witness: My name is Joseph P. Dragich.

The Clerk: D-r-a-g-i-c-h?

The Witness: Yes. [81]

Direct Examination

By Mr. Karmelich:

Q. You are one of the respondents or one of the men being sued here? A. Right.

Q. You are a part owner of the U. S. LIBERATOR, is that correct? A. Right.

Q. During the latter part of 1959 and for at least 13, 14, 15, 16, 17 days of January, Mr. Strika was employed by you aboard the U. S. LIBERATOR?

A. He was.

Q. And you were the master of the U. S. LIBERATOR? A. Right.

Q. I show you a document which has been introduced into evidence as Respondent's Exhibit A and ask you whether you have ever seen that document.

A. I have.

(Testimony of Joseph P. Dragich.)

Q. Did you have it prepared?

A. No.

Q. Did you request someone to prepare it?

A. No.

Q. When was the first time that you were cognizant of the existence of this document?

A. When my crew demanded that I relieve Mr. Strika of [82] duties on board the second trip.

Q. Mr. Dragich, can you tell the court the circumstances leading up to your employment of Mr. Strika?

A. It is quite some time ago but I will do my best.

If my recollection is correct, we finished what we call local fishing, or the fish moved away.

Q. By "local fishing" you mean where you fished off the coast of California as distinguished from going down into foreign waters?

A. Right. Then there was one member of the crew of the former crew who got off. That evening I spoke to my wife and she said, "Why worry about it?"

Mr. Finkel: Objection, your Honor. That calls for hearsay testimony.

The Court: The objection is overruled.

Don't give us the conversation with your wife. You can say you spoke with your wife because that is not hearsay.

Q. (By Mr. Karmelich): Anyway, after talking to your wife what did you do?

(Testimony of Joseph P. Dragich.)

A. I says, "Fine." I understand he was a pretty good man, so I says—

Q. No, no. What did you do?

The Court: What did you do?

The Witness: I had the wife get in contact with his wife for him to come down and we would talk over whether he was [83] going to go with me or not.

Q. After you talked to him you hired him?

A. Right.

Q. How long did you know Mr. Strika prior to this time? A. I didn't get that.

Q. How long prior to your hiring Mr. Strika had you known him?

A. I would say probably five, six years.

Q. During that time—you heard Mr. Strika testify here in court—was his speech approximately the same during that time?

A. Well, I would say that there was very little change, if any. In fact, to the best of my ability I don't think I would be able to say that there was a change.

Q. And his movements?

A. His movements were always slow because he has been always a heavy man.

Q. Mr. Dragich, it has been testified here that the U. S. LIBERATOR left on a voyage some time in the latter part of September, early part of October, for a Mexican fishing voyage?

A. Well, in view of the fact that I have no records at the present time with me I will accept those dates as so.

(Testimony of Joseph P. Dragich.)

Q. Mr. Strika left with you on that trip?

A. Right. [84]

Q. During that time—let's say en route to the fishing grounds—did you observe the actions of Mr. Strika?

A. En route to the fishing grounds we only had three days of running, and that is hardly enough, because you take your watches and you need it during the day time, but outside of that, at night you just keep maintaining watches.

Q. Did you see him walk? A. Yes.

Q. How was that?

A. His usual walk; slow. He is sure-footed.

Q. Did you ever see him light a cigarette?

A. Oh, yes.

Q. Will you explain to the court just what you observed when Mr. Strika was attempting to light a cigarette?

A. Well, there is many a cigarette that he lit that he had to light a second match because of the shaking of his hand.

Q. Did you notice anything about his face?

A. Yes. Saliva coming out of the corners of his mouth.

Q. Did you notice this throughout the first trip?

A. At first I didn't pay too much attention to it until one of the crew members drew my attention to it.

Q. During the first trip did your crew members complain to you about the work that Mr. Strika was doing? Just yes or no. A. Yes, they did. [85]

(Testimony of Joseph P. Dragich.)

Q. To the best of your recollection, will you tell the court briefly what were the assigned or what was the assigned duty of Mr. Strika on the first trip?

A. Well, as a rule that is practically the skipper's responsibility and you try a man at various places. Of course, Mr. Strika was insistent upon taking care of the corks. But he could not stand up to the pace that the youngsters put up for him. So then we had to change him.

Q. When you say "we had to change him," was that during the first trip?

A. That was during the first trip.

Q. And—

A. He was on the web for a while, but he couldn't even hold that up. Then we changed him to the lead line. Then for a while in the first trip we couldn't do any more, we put him on the hook, taking care of the hook and the strap.

Mr. Finkel: May I have the answer read?

(The answer was read by the reporter.)

The Witness: Right.

Q. (By Mr. Karmelich): Will you explain to the court what you mean by the hook and the strap?

A. In the rigger's language, the hook—the way I am referring to it, it would be called the whip. A whip is a single cable going up to the top of the boom and down to the winch, and by means of this we pick up the net and drop it down again for the boys to pick it up.

Q. And the strap that you referred to?

A. The strap is around the entire net and picks up the net to the top of the boom and then drops it

(Testimony of Joseph P. Dragich.)

down again. We have a man stationed, when the net drops down all you have to do is unhook it because there is another strap already in place on the side of the rail, so all you do is swing this hook over to the man that is already waiting for it. Then pick up the strap and throw it up against the side.

I imagine, offhand I would say the strap is made out of about $\frac{3}{4}$ -inch nylon. It is a very light piece, it runs about six feet, two pieces—

Q. In length?

A. In length, and it is round, coiled.

Q. During the second trip, Mr. Dragich, I am taking your attention now to the second trip, did you see Mr. Strika faint? A. I did not.

Q. Did it come to your attention in any manner that he had fainted?

A. Yes. The crew told me about it.

Q. After this incident, did you have a discussion with Mr. Strika? A. I did.

Q. Where was that discussion? [87]

A. In the galley on the boat.

Q. When?

A. I imagine it probably was a week or so after. But as far as my knowledge goes, I have no knowledge of his fainting.

Q. Other than what was told you?

A. What was told to me.

Q. Did the crew inform you that it was more than once? A. No. They informed me it was once.

Q. At the time that you had this conversation with him, what was said?

(Testimony of Joseph P. Dragich.)

A. He says, "It is nothing, it is just too darn hot down here," he says, "Like the first trip." Which we worked I would say about 1200 miles further to the northwest, which was colder weather. It didn't bother him, but he says, "That doggone heat down there, it is too much for me, I can't take it." He says, "Right now all I have got is a headache."

Q. During the second trip, let's take the period of time of the second trip, prior to your having knowledge that Mr. Strika had fainted, as compared to the first trip were his actions any different?

A. No, I wouldn't say they were.

Q. What were his particular duties aboard for that period time, prior to your having knowledge of his fainting? [88]

A. Let's put it this way: Toward the end of the first trip Mr. Strika was taking care of this hook—

Mr. Strika: Excuse me, Dragich, that was second trip.

The Court: You be quiet.

Mr. Strika: I am sorry.

The Witness (Continuing): So the beginning of the second trip it was the same way. The fact is that Mr. Mosich, Toma Mosich, one of the crew members, who was on the strap or next to the corks, he would go over and reach for the hook or the strap to help him out.

Q. (By Mr. Karmelich): Subsequent to the report of this fainting spell to you, were his actions or was his work any different than before this report came to you?

(Testimony of Joseph P. Dragich.)

A. To the best of my ability, to answer that truthfully, I do not believe that there was any difference.

Q. It is your testimony that his actions during the first trip and the second trip—

A. Were just about a stand-off, I would say.

Q. During the second trip, Mr. Dragich, did the crew complain to you of the work being done by Mr. Strika?

A. Well, they all jumped my back, "How the devil are we going to have a man ride on our backs all the time? Do we have to carry a man to that extent?"

Mr. Finkel: May I have the last question and answer read, please?

(The question and answer were read by the reporter.)

Q. (By Mr. Karmelich): At the completion of the second trip it has been testified that you arrived at San Pedro, California, on or about January 13, 1960; then it has likewise been testified that you unloaded your catch of fish; did you have any conversation after the second trip and after you unloaded this fish, with Mr. Strika, as to his further employment?

A. Well, as reluctant as I was of letting him go, I told him that that was it, that I couldn't carry on, or else he has to stay up with the rest of the crew.

Q. Did you at that time tell him he was no longer employed?

A. Well, I didn't know that the crew signed—

Q. At this time that you told him that, you had not fired him?

A. No, I did not.

(Testimony of Joseph P. Dragich.)

Q. When was the next occasion that you had to see Mr. Strika?

A. Well, I think it was the following day when the crew presented me with that note which you presented as evidence—

Q. You mean Respondent's A that you identified?

A. Right.

I was forced to relieve Strika of his duties. Either [90] that or lose the rest of my crew, which would be darn hard to replace.

Q. Mr. Dragich, at that time that this document was presented to you, did you have any discussions at or about that time with Mr. John Royal, Mr. Strika's union representative?

A. That come after this note was presented to me by the crew members. I think it was the following day.

Q. Was Mr. Strika present?

A. I think he was on the dock.

Q. Was he within earshot or could he hear the conversation? You don't know?

A. No, I wouldn't say either way.

Q. Then we won't ask about that conversation at this time.

After that time you made a subsequent trip?

A. That's right.

Q. And Mr. Strika did not sail with you?

A. No.

Q. Did Mr. Strika ever come up to you and state, "I have been to a doctor, here is a slip, he says I can go fishing," or "I am fit for duty"?

(Testimony of Joseph P. Dragich.)

A. Right, he did.

Q. At that time what did you tell him?

A. I told him—I showed him that paper, I said, “I am sorry. Whether you are fit for duty or not, it is easier to [91] find one man than it is to find another ten.”

According to the contract with the union—

Q. We won’t go into that.

A. —that relieved me of that duty.

Mr. Karmelich: Okay, Mr. Dragich, that is all.

Cross-Examination

By Mr. Finkel:

Q. Mr. Dragich, you knew the libelant, Mr. Strika, for about five or six years before he went sailing with you, did you not?

A. Somewheres in that neighborhood. Maybe five, six months, or a year differential. I won’t argue over it.

Q. When you lost your crew member, which led you to call upon Mr. Strika in September of ’59 to replace that lost crew member, you contacted him and you were trying to get him to come to work with you?

A. Yes, through the women, through the families.

Q. As a result—

A. As a result—

Q. Let me finish. As a result, you contacted him and he came to work for you at your request, isn’t that right? A. Yes.

Q. When you shipped out on this first trip starting late September 1959, you said, I think, it took you about

(Testimony of Joseph P. Dragich.)

[92] three, four days to get to the fishing grounds, is that right, is that a fair statement?

A. It is about 56 hours after leaving port.

Q. During that time the men who are on the crew don't do any strenuous work, do they?

A. No. It is just odds and ends, just pick up here and there, change ropes and what have you on the boat.

Q. What do you usually do during that time?

A. Me?

Q. Yes, as the skipper.

A. I supervise these odds and ends that has to be done, see that the rigging is changed, if necessary, or whatever ropes have to be changed.

Q. And you are a pretty busy man during that time, aren't you?

A. Definitely busy.

Q. Being a busy man like that, it is possible that your mind was on your business, which it should have been, and as you said in your direct examination, everything was slow, it is pretty hard to make any specific observations with any man; is that right?

A. That's right.

Q. Then about the fourth day or the 56th hour, or something like that, the fishing began?

A. Right. [98]

Q. From that time on, that is when the heavy work began on this first trip, that is when the real operation got under way?

A. Yes, that is when the tension begins.

Q. That is a curious statement you just made, "when the tension begins."

The Court: Keep your voice up, counsel.

(Testimony of Joseph P. Dragich.)

Q. (By Mr. Finkel): What do you mean when you say "tension begins"?

A. Anxiety whether you are going to find the fish or not.

Q. I see what you mean. At the time that you hired Mr. Strika when you first sailed off, as far as you knew you had hired a healthy, able-bodied seaman, had you not?

A. I was under that assumption.

Q. And you base this feeling upon what you knew about this man in the past, and what you had observed up to that time, is that correct? A. Correct.

Q. Do you remember when it was that the first complaint was made to you on the first trip according to your testimony about Mr. Strika's work?

A. Yes. They were on the way home mostly, am I going to keep the man on.

Q. While you were on the way home on the first trip and [94] these first complaints were made to you, do you remember what the complaints were?

A. No. It was non specific, let's put it that way, but there was growling from all sides.

Q. In other words, when you were on your way back from the first trip there was a lot of grumb among the crew that Mr. Strika wasn't doing his work?

A. The man that was sitting here just prior to me did more grumbling than any one of them.

Q. When you got back at the end of the first trip and then the unloading process began—is that right?

A. Right.

(Testimony of Joseph P. Dragich.)

Q. Did Mr. Strika participate in that?

A. You might call it that.

Q. Tell us what you mean by that.

A. Any man that doesn't keep up his end, he is—there is three men on each side to a bucket, and when we have to wait for that bucket to be taken out of the fish hold, somebody is just not producing.

Q. Do you remember what it was that Mr. Strika was doing or not doing during that unloading process?

A. Hardly. Because I am very seldom down on the boat when we are unloading.

Q. Does that mean that you didn't have occasion to see it carefully and you are basing this on what you heard, or did [95] you actually see this inability to work?

A. Wait a minute. Let me get that straight.

Q. Let's be sure we get it straight, because it is important to know what you did see. Let me rephrase my question. My question is this:—

A. If you don't mind, speak a little slower and a little louder.

Q. I will do my best.

During the unloading process at the end of the first trip I would like you to tell the court what you observed with respect to Mr. Strika's work in that unloading process. A. Very slow.

Q. What did you—

A. By that I mean that he does not keep up with the rest of the gang or his side.

Q. Just exactly what did you see Mr. Strika do or

(Testimony of Joseph P. Dragich.)

not do during the unloading process? What did you see, yourself?

A. I seen him on deck guiding the bucket down into the hatch, and I did see him once or twice down in the hatch putting the fish in the bucket.

Q. And then you shipped out on the second trip, is that right?

A. Yes. More or less because of family relations.

Q. When you got out on the second trip, the complaining continued, didn't it, about Mr. Strika's work?
[96]

A. Right.

Q. Tell us about that.

A. There just isn't too much to be said about it. The crew kept complaining, "What the devil, am I going to keep doing that man's work and my own?"

If we sent him for any piece of rope or a strap or anything, there would be one of the young fellows that would jump and grab it and bring it back before he would even turn around.

Q. This is what you observed happen on the second trip?

A. Not only the second, but the first trip, too.

Q. Let me interrupt you for a moment. What I would like to ask you about is—not to hide other things, but just to ask you for a moment about something that happened on the second trip. Okay?

A. That's right.

Q. That's what I am directing my question to now. I would like to know what you observed about Mr. Strika's work with your own eyes on the second trip.

A. Slow.

(Testimony of Joseph P. Dragich.)

Q. What do you mean when you say, "Slow"? Just exactly what did you see?

A. A man is definitely slow—

Q. Just what did you see?

A. Slow movements. [97]

Q. What kind of slow movements?

A. When a man has slow movements, it takes him a half hour to turn around.

Q. Just tell me what you saw, sir.

The Court: Let him answer the question, counsel. You asked him what he means by slow and then you won't let him answer it.

Mr. Finkel: I am not trying to be difficult—

The Witness: I think you are.

Mr. Finkel: If I was being difficult, it was just—

The Court: Just a moment, both of you.

Read the question to him and let him answer it.

(The question referred to was read by the reporter, as follows:

("Q. What do you mean when you say, 'Slow.' Just exactly what did you see?")

The Court: Go ahead and answer the question. What do you mean when you say "slow"?

The Witness: We ask the man to go across the boat, which is 24 feet wide, and a young fellow from another job goes and jumps and brings the strap back. What would you consider it?

The Court: Never mind asking him questions. You just answer it.

The Witness: Well, I would consider that very slow.

(Testimony of Joseph P. Dragich.)

Q. (By Mr. Finkel): After the members of the crew or some of them told you on the second trip that Mr. Strika had fainted—and somebody did tell you that some time during the second trip? A. Right.

Q. After that did you have any occasion to observe Mr. Strika's face?

A. Yes. Couldn't help but observe it.

Q. Do you remember anything peculiar about his face? A. Nothing that I can name.

Q. Did you have occasion to observe his physical movements after that fainting report?

A. Approximately the same as before.

Q. Will you describe the physical movements that you saw, please?

A. I have already described one incident. I don't know how much more you want me to. But his movements were identical to those of the first or the second trip.

Q. I am not trying to get you to say anything you don't want to say. Please don't misunderstand me, Mr. Dragich. All I am asking you to do is to describe to the court the physical—you say he was moving slowly; I would like to know just exactly what type of physical movements you saw him make that stand out in your mind, if there are any that stand out in your mind. If there aren't, there aren't. [99]

A. When a man is slow, he is just slow. If you take a look at that man, he is heavy, he is just slow, unable to stand up and work with the rest of the crew members. That is in movement or any other way.

Q. When you had the conversation with Mr. Strika

(Testimony of Joseph P. Dragich.)

on the second trip after you were told that he fainted, when you say he said, "It is too hot, I have a headache," how did he appear to you to look at that time?

A. Frankly, he had a little more color because he was sunburned. But outside of that I couldn't see any difference than the first trip.

Q. Would you say that during the latter part of the second trip that Mr. Strika was pretty much—in terms of being productive on the ship—was pretty much worthless? A. Very much so.

Q. Would you say this was true throughout the second trip?

A. I would say it was true throughout both of the trips that he was present.

Q. You would say that he was pretty much worthless throughout both trips? A. That's right.

Q. Would you say that he was pretty much worthless from the very beginning of the first trip?

A. Well, the first two or three days I would say he was [100] trying to keep up the pace with the young fellows.

Q. Was there any point during that first trip where you saw a switch or change? A. No, no.

Q. So you would say—

A. It was just one of those things.

Q. The question is, just exactly what we mean by one of those things.

A. Let's assume that one person is livelier than the next fellow, we see that every day where we have so many changes on our boats.

Q. Did you have occasion to talk to Mr. Strika

(Testimony of Joseph P. Dragich.)

while the ship was in port after the first trip about the complaints you had heard? A. Yes.

Q. Did you have occasion to talk to him about these complaints while you were still on the vessel coming in from the first trip?

A. Yes. The gang was after me and I spoke to him about it, to see if I could perk him up, because one fellow in particular was always on my back about him.

Q. Do you remember who that was?

A. Yes, Mr. Mosich, Toma Mosich.

Q. On the first portion of the first trip did you observe Mr. Strika to drool, or anything like that? [101]

A. Yes.

Q. When did you see it for the first time?

A. I think it was about a week after. Somebody in the crew, I think it was right after dinner that it was more noticeable than any time of the day.

Q. Did you ever notice him to have a glassy stare?

A. Well, to the best of my ability, as far back as I can recall him he always had that.

Q. Do you remember whether he had—I am not talking about his stuttering now, I am talking about something aside from his stuttering—did you ever notice anything peculiar in his speech besides his stuttering?

A. He was always more or less sort of dragging the words out, except when singing.

Q. Except when singing?

A. Yes. He used to be quite a singer.

(Testimony of Joseph P. Dragich.)

Q. Do you remember how long ago that was?

A. Quite some time.

Q. Can you measure that in years?

A. Yes. I think that would be probably four, five years ago, something like that.

Q. Did you ever hear him sing during the second trip?

A. Yes. About a stand-off. He always tried.

Q. When you got back into port after the second trip and you told Mr. Strika that the crew said that he had to go— [102]

A. That's it.

Q. —did he say anything to you in response?

A. He says that he was going to raise hell with me. That's about it.

Q. Did he ever come back to you after that with a slip of some kind from the Public Health office?

A. Right.

Q. What happened then?

A. I told him that I was sorry, but it is easier for me to find one man than to find ten.

Q. Did he show you a fit-for-duty slip?

A. Yes, sir.

Q. Did you make any comment to him about that slip?

A. I told him that either he is laying down on the job—

Q. Did you say anything to him about that fit-for-duty slip?

A. Yes.

Q. What did you say to him?

A. Apparently he must have been laying down on the job while he was out with us, and he is pulling

(Testimony of Joseph P. Dragich.)

somebody's leg. He is not going to pull mine any more.

Q. Are those the things you said to him when he showed you a fit-for-duty slip?

A. That is correct. Any man who shows me a slip fit [103] for duty and he doesn't produce work on the prior trip, he has been pulling my leg.

Mr. Finkel: No further questions. Thank you.

Mr. Karmelich: That is all, Mr. Dragich.

I would like to call Mr. Nick Mirkovich.

NICHOLAS A. MIRKOVICH

called as a witness by and on behalf of the respondents, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated and give us your full name.

The Witness: Nicholas A. Mirkovich.

The Clerk: Would you spell your last name?

The Witness: M-i-r-k-o-v-i-c-h.

Direct Examination

By Mr. Karmelich:

Q. Mr. Mirkovich, this is going to be very brief. You have been here, you have heard of two trips that the witnesses have testified about? A. Yes.

Q. One that commenced September and ended in October, one that commenced in November and ended in January of 1960. You were not on board the vessel for the voyage that ended January 13, 1960, were you? [104] A. No.

(Testimony of Nicholas A. Mirkovich.)

Q. You were on the voyage from September to October? A. Yes, I was.

Q. The first voyage of these two? A. Yes.

Q. At that time Mr. Strika was aboard the vessel, was he not? A. Yes, he was.

Q. Did you observe Mr. Strika's actions prior to making any set, that is, his movements about the ship, walking? A. It was slow.

Q. Did you ever see him attempt to light a cigarette? A. Yes.

Q. Will you describe just what you saw?

A. Well, it would take him—you know, like a normal guy would go like that (indicating), it would take him a little time.

Q. Take him a long time?

A. A lot longer than it takes to just strike a match.

Q. Did you observe anything about any saliva on his face?

A. Sometimes when he would take his cigarette from his mouth, you would.

Q. It would drool down his lower lip?

A. Yes. [105]

Q. To your knowledge—let's put it this way: Did you complain about the work of Mr. Strika during the first trip?

A. It was just slow. It is hard to keep up—it is harder for everybody else, you know, when one guy can't keep up with you, it is tougher.

Q. Would you say this is a fair statement—that this slowness prevented the rapidity of bringing in the net? A. Yes.

(Testimony of Nicholas A. Mirkovich.)

Q. There has been a conflict in statements here as to whether this man was on the corks only during the first trip or whether he was on the hook, lead line, web, and everything. To the best of your recollection, can you recall exactly what duties he had?

A. I know he was on the corks. I know once that old man Mosich was on the corks, but I don't remember how often. I didn't pay much attention. I forgot. It was quite a while ago. I remember he was on the corks.

Q. You can't remember his specific job?

A. On the corks, mainly.

Q. But you can't recall whether he ever handled the hook? A. No, I really can't.

Q. Or the lead line or on the web?

A. No, I can't.

Q. I show you a document, Mr. Mirkovich, which has been [106] introduced into evidence as Respondent's A, and ask you whether you have ever seen this document. A. Yes.

Q. Does your signature appear thereon?

A. Yes.

Q. Is that the second signature below Daniel Geldom? A. Yes.

Q. Was this document signed by you after the second trip? A. Yes.

Q. You did not make the second trip?

A. No, I didn't.

Q. Why was that, will you tell the court?

A. I stood home for one trip.

(Testimony of Nicholas A. Mirkovich.)

Q. Is that because you were to be examined for induction?

A. Yes. Then I had my cousin take my place for one trip.

Q. And you were not inducted so then you returned to the vessel? A. Yes.

Q. Did you read the above paragraph?

A. Yes.

Q. Before you signed this document?

A. Yes. [107]

Q. You signed this document because of your observation of Mr. Strika on the first trip? A. Yes.

Mr. Karmelich: That is all of this witness.

Mr. Finkel: I have no questions.

Mr. Karmelich: Respondent rests.

The Court: Do you have anything further?

Mr. Finkel: Nothing further from respondent, your Honor.

The Court: Do you want to state your argument now or do you want to wait until this afternoon?

Mr. Finkel: I prefer to wait, your Honor, if the court will permit.

The Court: All right. We will recess until 2:00 o'clock.

Mr. Karmelich: Counsel, you are not bringing any more witnesses, are you?

The Court: You both have rested.

Mr. Karmelich: Yes.

Mr. Finkel: Your Honor, if the court will permit me, I would like to make one statement, if I may.

The Court: Yes.

Mr. Finkel: I have been considering the advisability in terms of representing my client's case in the manner which I think most appropriate, to bring one rebuttal witness to the [108] respondent's case. That witness is not available at this time. That witness may or may not be available within the next hour. I will know in a few moments. I don't know right now. I will know within a matter of moments.

The Court: If you bring the witness in, you may put the witness on at 2:00 o'clock.

Mr. Karmelich: I just wanted to know.

(Whereupon, at 11:50 o'clock a.m., an adjournment was taken to 2:00 o'clock, p.m.)

[Endorsed]: Filed July 31, 1961.

[Endorsed]: No. 17500. United States Court of Appeals for the Ninth Circuit. Joe Dragich and Van Camp Sea Food Company, Inc., Appellant, vs. Nikola Strika, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: August 2, 1961.

Docketed: August 10, 1961.

/s/ FRANK H. SCHMID.

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 17500

JOE DRAGICH and VAN CAMP SEA FOOD COM-
PANY, INC.,

Appellants,

vs.

NIKOLA STRIKA,

Appellee.

STATEMENT OF POINTS ON APPEAL AND
DESIGNATION OF RECORD ON APPEAL.

Joe Dragich, et al., appellants in the above entitled case, hereby adopt the statement of Points on Appeal and Designation of Record on Appeal filed heretofore in the United States District Court in and for the Southern District of California, Southern Division.

Dated: August 25, 1961.

KARMELICH AND FELANDO
/s/ By JOHN J. KARMELICH

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Aug. 28, 1961. Frank H. Schmid,
Clerk.
